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ROYAL COMMISSION ON TRANSPORTATION

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
TUESDAY,
MAY 2, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D., - CHAIRMAN
HAROLD ADAMS INNIS - COMMISSIONER
HENRY FORBES ANGUS - COMMISSIONER

G. R. Hunter
Secretary

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J.J. Frawley, K.C. ,)	Province of Alberta
J. Paul Barry)	Province of New Brunswick
C.D. Shepard)	Province of Manitoba
M.A. MacPherson, K.C.)	Province of Saskatchewan
C.W. Brazier)	Province of British Columbia
F.R. Hume	}	Canadian Automotive Trans- portation Association.
M.L. Rapoport		

Ottawa, Ontario,
Tuesday, May 2, 1950.

M O R N I N G S E S S I O N

MR. MACPHERSON: My lord, I wish to make a statement on behalf of Mr. Lynd, counsel for the Saskatchewan coal operators, who found that it was impossible to be here himself to take part in the argument; and I shall be very brief.

The evidence dealing with the claim of the Saskatchewan coal operators is to be found in Volume 5 of the evidence at pages 823 to 862. The matter is also referred to Exhibit 128 at pages 56 and 57.

The whole difficulty, so far as the Saskatchewan coal operators are concerned, is that the quality of the coal that is produced in the Estevan, Bienfait and Roche Percee field is a coal that has only from 6,500 to 7,000 British Thermal Units per ton as against about 14,000 B.T.U's per ton in respect of Alberta and British Columbia coal, and as against about 8,750 B.T.U's per ton in respect of the Alberta lignite, which is a superior lignite in quality to the Saskatchewan product.

Just for the record, may I say that the production of coal over the past years will be of interest. The first production of coal was in 1890 when only 200 tons were produced; by 1915, 240,000 tons were produced; by 1929, 580,000 tons; by 1933, 927,000 tons; and in 1937 the production exceeded one million tons of coal. During the last four years, from 1945 to 1948, the production has gone up to 1,500,000 tons of coal per year. That is from 1945 to 1948 inclusive, the only years for which I have the figures. I have not them for 1949. In each of those years the production exceeded 1,500,000 tons.

Originally the coal that was produced was used in Saskatchewan and some in Manitoba for domestic purposes. Today 75 per cent of the coal is used for industrial purposes; and of the production, 60 per cent of the production is consumed in Manitoba and 40 per cent only in the province of Saskatchewan.

Then in the field there is this interesting fact, that the deep-sea mining as it has existed there has practically gone out of business. As late as 1943 only 54.8 per cent of the coal mined was mined by the strip mining process; but last year 98.64 per cent of the coal mined was mined by the strip process.

The complaint of the Saskatchewan coal operators, and what they suggest to the commission for its consideration, is this, Having regard to the quality of the coal; in the various rate increase cases there has been a flat allowance per ton of increase irrespective of the quality of the coal or irrespective of its value.

THE CHAIRMAN: Of what?

MR. MACPHERSON: Irrespective of the quality of the coal.

THE CHAIRMAN: No; I thought you said something else.

MR. MACPHERSON: Or irrespective of its value. The fact is that having regard to efficiency, probably you could call it, it takes two tons of Saskatchewan coal to equal one ton of Alberta coal, in B.T U's; and yet the flat increase of 25 cents a ton, on both coals, was what was imposed under the 21 per cent case; and the flat rate was also imposed under the 16 per cent case.

In the United States there were three cases, and I will give Your lordship these citations: Ex Parte, 162, 266 I.C.C. --

THE CHAIRMAN: Pardon me a moment. Did you say "Ex Parte"?

MR. MACPHERSON: Ex Parte 162, to be found in 266 I.C.C. 537 at 620, the reference to coal; Ex Parte 166, 270 I.C.C., 403 at 457; and Ex Parte, 168, 276 I.C.C., page 9 at 114.

These were cases where increases were given by the Interstate Commerce Commission and at each of these pages as indicated in the citations I have given, the treatment by the Interstate Commission of coal was to fix the increase for lignite coal at one half that of bituminous coal; that is, there was recognized in the freight rate treatment the difference in the quality of the coal; and actually the rate as fixed was one half of the rate as fixed for bituminous coal.

THE CHAIRMAN: I suppose there is a difference too in the value, or in the price?

MR. MACPHERSON: There is a difference in the price, yes.

THE CHAIRMAN: A corresponding difference?

MR. MACPHERSON: There is a corresponding difference in the price. So far as Saskatchewan coal is concerned, the price is cheap because of the fact that the B.T.U.'s are low.

There is also in our own country, in the western rates case, in 1914, 17 C.R.C., 123 --

THE CHAIRMAN: 17 what?

MR. MACPHERSON: 17 C.R.C. -- Canadian Railway Cases -- 123, my lord.

THE CHAIRMAN: That is the western rates case, is it?

MR. MACPHERSON: The western tolls case, yes; 1914. There was a recognition there that there was this distinction between the two coals, for in respect of Alberta bituminous coal the rate was 55 per cent of Class 10 and in respect of the lignite coal it was 50 per cent.

There was a ten per cent differential in favour of the lignite as against the other coals with a higher B.T.U. content. The complaint of the Saskatchewan coal operators is that there is a measure of discrimination in so far as they are concerned in that this patent difference is not recognized.

THE CHAIRMAN: To refresh my memory, will you tell me again how these freight rates operate according to distance? Take Estevan to Winnipeg. There is quite a lot of Estevan coal goes to Winnipeg.

MR. MacPHERSON: Yes, a great deal of it.

THE CHAIRMAN: What does it cost per ton?

MR. MacPHERSON: I cannot give you the exact amount: I think it is \$2.30.

THE CHAIRMAN: They are in the book.

MR. MacPHERSON: I think it is \$2.30. It is in the evidence, in any event. I think it is \$2.30 a ton.

THE CHAIRMAN: At the present time?

MR. MacPHERSON: At the present time.

THE CHAIRMAN: As compared with the situation before the increase --

MR. MacPHERSON: Before the last increase it would be \$2.05. There was 25 cents --

THE CHAIRMAN: A flat increase was applied.

MR. MacPHERSON: Yes.

THE CHAIRMAN: Is that regardless of the distance?

MR. MacPHERSON: I think that is the maximum.

THE CHAIRMAN: Twenty-five cents a ton no matter where it is from?

MR. MacPHERSON: Mr. Sinclair says, and I think it is correct, that the rates are grouped on the field. It was \$2.05 and went to \$2.30, and then there was a further increase of 15 cents.

THE CHAIRMAN: Fifteen~~x~~cents.

MR. MacPHERSON: In the last case.

THE CHAIRMAN: Making \$2.45.

MR. MacPHERSON: \$2.45. There is also this point, that from the standpoint of rail and from the standpoint of Saskatchewan coal operators almost the entire production of the Saskatchewan coal operators moves by rail. So far as the Winnipeg market is concerned of necessity it must go by rail. There is a great sale in Brandon and that must go by rail. In so far as the locality is concerned within a radius of one hundred or more miles around the field, the Saskatchewan coal operators have entered into agreed charge agreements with the railway companies, so that practically none of their production goes out by truck. All that is moved is moved by rail. There is some truck movement from the area, but it is largely from the smaller mines. As your lordship will remember, there are a great many very small mines there. They are not in the association and their total production is not great. That is about all I wish to say to the Commission on behalf of Mr. Lynd.

THE CHAIRMAN: What is he asking for?

MR. MacPHERSON: What he is asking for is that there be a recommendation from the Commission, having regard to the extent to which the movement of this product depends on the freight rate and the keen competition that exists with Alberta coal, that there should be that same treatment of lignite in Canada in the matter of freight rates as in the United States.

THE CHAIRMAN: Does he not also say that the method of applying the rate itself militates against Estevan coal compared with coal farther away?

MR. MacPHERSON: Yes, he does, my lord.

THE CHAIRMAN: What would he have done about that? Would he have the method changed into a mileage one?

MR. MacPHERSON: I do not think he makes any submission in that connection.

THE CHAIRMAN: It goes on the value?

MR. MacPHERSON: On the value.

COMMISSIONER ANGUS: To whom is the recommendation to be addressed? It comes so very near the sort of appeal that is usually addressed to the Board of Transport Commissioners for particular action.

MR. MacPHERSON: I may say frankly that the position as urged to the Commission was urged by the coal operators to the Board of Transport Commissioners in the 21% case.

THE CHAIRMAN: Is it not something equivalent to the objection of other shippers against horizontal increases?

MR. MacPHERSON: Well, yes.

THE CHAIRMAN: The coal miners object to their particular method.

MR. MacPHERSON: That is right.

THE CHAIRMAN: I suppose if they asked for anything it would be a provision in the Act that coal should be dealt with along certain principles.

MR. MacPHERSON: The difficulty is that if you are going to deal with every commodity in the Act it makes it almost impossible.

THE CHAIRMAN: Coal in Canada is a commodity that does receive special treatment, government subsidies and so on.

MR. MacPHERSON: Subventions and that sort of thing are paid east and west. In any event, that is the submission I wish to make on behalf of Mr. Lynd and the Saskatchewan coal operators.

MR. HUME: Mr. Chairman, during the course of the testimony various questions were asked of me and one or two witnesses on behalf of the Canadian Automotive Transportation Association which could not be answered at that time.

THE CHAIRMAN: You are beginning to argue now?

MR. HUME: No, I want to put these answers on the record as I was asked to do before I start my argument. It has not been opportune to do so before because it would have meant interrupting witnesses who were here. I have two or three items that are unanswered yet which I want to put on the record before I start my argument.

THE CHAIRMAN: You are going to answer them yourself?

MR. HUME: I have obtained the answers so far as I have been able to do so. The first reference was in Volume 54, page 10318. Mr. O'Donnell asked the witness how many trucks were owned by the 1200 members of the Automotive Transportation Association in Ontario. I am advised that the answer to that question is that the 1200 members own a total of 9,800 trucks and trailers, and that the average in Ontario, counting members and non-members of the association, is 2.6 trucks per operator. At page 10358 a question came up as to the difference between rail rates and truck rates. The witness, Mr. Magee, said that he thought in some instances the railways had gone below truck rates, and went on to say that if they had gone a little lower the trucks would not have been able to carry the freight. I have been in touch with the various associations, and I am instructed by the various provincial associations to advise the Commission that there are no such rates in existence today at which any criticism can be levelled although certain situations

and all right.

There is no more.

After the first of the year, the first of the year.

There is no more.

There is no more.

There is no more.

There is no more.

There is no more.

have existed in the past. So far as today is concerned, or 1949 and 1950, there are no such rates.

At page 10420 Mr. Sinclair asked the witness whether the provincial associations had made any studies.

MR. O'DONNELL: 10620?

MR. HUME: 10420.

MR. O'DONNELL: What volume?

MR. HUME: Volume 54. Mr. Sinclair asked whether any of the provincial associations had made any studies as to the question of payment of highway costs and their allocation. I am instructed by the associations that while they are continually having the matter under review no particular studies have been made.

At page 10476 of Volume 54 there was a reference made to the Transport Act in England of 1947.

THE CHAIRMAN: To what?

MR. HUME: The Transport Act of England of 1947. One copy of this Act was in our possession, and it was loaned to the Assistant Secretary. Subsequently he advised that he had received copies from His Majesty's stationers in England. Our copy was returned to us, so I presume that matter is attended to.

(Page 21274 follows)

Lastly, Mr. Chairman, on March 10th, in volume 93, you were discussing a matter with Mr. Evans as to the practice of the various state regulatory bodies licensing railways for intra-state truck movements. I was present in the courtroom and I was appealed to as to whether I had any information or could get any information on that point. I am sorry to say that I have not been very successful. I wrote to the American Trucking Association in Washington on April 17th to find out if I could receive the information that you were inquiring about, sir, and I received a reply from the attorney, Mr. Harry E. Boot, who advised that there was no uniformity in the United States, and that in order to answer my question they would have to examine the rulings of the forty-eight state boards. They had never done so, he was unable to give me any answer, and therefore, sir, I am afraid that I am unable to advise you what is the practice with regard to the particular state ruling commissions in that regard.

Now, I think, Mr. Chairman, that that completes all of the unanswered items through the transcript where I was asked to furnish any additional information.

MR SINCLAIR: I presume that that is intra-state movement you are talking about.

MR HUME: Yes ; that was the only matter under discussion, Mr. Chairman, was intra-state movement.

THE CHAIRMAN: Mr. Hume, before you go any further, I think you had better come up here to where Mr. MacPherson was. You will not have to talk so loud, and we will hear you much better.

COMMISSIONER INNIS: In the figure which you gave as to the average owned by each person, is there any more accurate indication as to the extent of large-scale owner-

ship? It does not mean anything to just have a flat 2.1 trucks per person.

MR HUME: No. The Department of Highways in Ontario advised that, dividing the number of operators into the number of trucks, the average is 2.6 in the province.

COMMISSIONER INNIS: I say that does not mean anything. What one would like to know is how many trucks do the large operators own, as to the concentration of ownership.

MR HUME: Well, I have a statement here showing the total number of trucks, but I do not think that answers your question. You would like to know how many trucks the large operators own. I do not know that, but undoubtedly I can get that and write in, Dr. Innis.

MR O'DONNELL: How many are trucks and how many are trailers? -- because the average would be nine.

MR HUME: Eight.

MR O'DONNELL: Can you break down the number of trucks as distinct from the number of trailers?

MR HUME: I do not think I can do it for the whole province, but the Association may have some figures indicating the number of trucks owned by some of the large operators.

THE CHAIRMAN: Mr. Hume, would you give me the name of your Association again?

MR HUME: The Canadian Automotive Transportation Association.

Mr. Chairman and honourable Commissioners:

Before launching into the argument on behalf of the Canadian Automotive Transportation Association I should like to state, sir, that I am aware of the fact that a great deal of the so-called evidence that has already been presented in 117 days of hearings has been argued, and I

have attempted to do two things in preparing my argument. One was to seek to eliminate any rehash of any argument that has taken place, and the other was to condense what I have to say within the time limit of the memorandum issued by the Commission in connection with the argument procedure. Where I do rehash or refer to argument, it is only where I consider it absolutely necessary in order to make the argument that I feel should be presented to the Commission at this time.

I should like also to point out to the Commission that this Association that I have been representing here, with my associate Mr. Rapoport is a federation of six affiliated provincial organizations located in the provinces from British Columbia to and including Quebec. It is a matter of interest perhaps for me to tell the Commission that on April 21, 1950, there came into existence the Maritime Motor Transport Association, and that subsequently it is expected that that Association will become a member of the Association I represent, in order that their representation would be truly national from one ocean to the other. I feel that the Association speaks on behalf of the members certainly, although I do not represent here any individual trucking operator or trucking concern, but through me the Association speaks on behalf of the members of the Association.

I represent an industry that is not under the jurisdiction of the Dominion Parliament. The Association decided that the terms of reference as contained in the Order in Council No. P.C. 6033 were not specifically the concern of the trucking industry, because the terms of the second paragraph indicated that the Committee of the Privy Council had come to the conclusion

" that it would be in the public interest that an

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inquiry be made into the matters involved in order that all questions of economic policy within the jurisdiction of Parliament" -- and by that they mean, of course, the Parliament of Canada --

"arising out of the operation and maintenance of national transportation, may be examined and reported upon."

The industry therefore took the original view that this inquiry was not something with which they should be concerned, and they took no action apart from writing a letter to you, sir, as Chairman, on December 31, 1948, offering assistance whenever that might be required.

It became obvious, however, as the Royal Commission proceeded to hold its regional hearings and hear submissions across the Dominion of Canada that the trucking industry was receiving considerable prominence in connection with the submissions of the various organizations to this Royal Commission and in the cross-examination of certain of the parties appearing before it.. For example, the outline submission of the Railway Association of Canada, dated May 28, 1949, which was available before the hearings commenced, indicated to the industry that they were going to receive certain prominence, certainly in that brief, and that there was an attack there that they should answer. Also in the matter of cross-examination of witnesses a typical example is found at page 402 in volume 3, where a witness was asked the question, "Don't you think it is fair that the trucking industry should pay its fair share of the highway costs?" indicating that there was a suggestion that they were not. Because of this fact and others, and because of the fact that the industry, the Association I represent, believed that certain portions of the record were incomplete and to

some extent inaccurate, that earlier decision was reversed, and the Association asked permission to file a brief and appear with witnesses before this Commission.

This Association is aware that it is not competent to make recommendations on the terrific problems that are included within the Order in Council P.C. 6033 in the transportation field within the jurisdiction of the Dominion of Canada, and the Association also feels very strongly that it was none of its business to criticize or make any comment to the railways on the manner in which they run their own businesses. And I think, Mr. Chairman, an examination of the record will indicate there might be the odd exception, but I do not think you will find in the record anywhere there has been any criticism levelled at the railways by the trucking industry in this hearing.

(Page 21280 follows)

The appearance therefore of this industry before the Commission is designed to assist where possible and to keep the record straight. The Association decided that by appearing before the Royal Commission, matters dealing with the trucking industry would not be heard ex parte and that the picture would be kept in focus. Rather than have the impression by the slip of a witness or something that was said and perhaps misunderstood to mean a problem of greater magnitude than that which really exists, it was felt that by making certain presentations here the matter could be kept in focus. It is doubtful if the Association would have taken any part in these proceedings if it had not been for the attack of the Railway Association of Canada, and that attack, it was noted, was adopted and approved by both the principal railroads in Canada.

In order to sketch for a brief moment the historical background of the trucking industry, I think I need only remind you, sir, that the industry has developed within the memory of most of us in this room. There has been, however, a conflict in the transportation industry that is very very old, and that conflict is obviously apparent today. The earliest example of the conflict that I was able to discover is referred to in Exhibit 122 which was read into the Transcript of Volume 49, page 9337, and it was there pointed out in that Exhibit (which I recall was an article reproduced in the "Saturday Night" of 1937) where the Thames River boatmen were petitioning the British Parliament in 1634 against the use of hackney cabs, that were threatening their monopoly on the

movement of freight in the City of London, and the petition to Parliament wanted Parliament to sweep them off the roadways, urging three things, as I recall the Exhibit points out. One was that they were overcrowding the highways; they were breaking up the pavements; and they were unfair competition to an existing and established form of transport. That is an example of this conflict, going back over three hundred years.

THE CHAIRMAN: Was that, by the way, for the transport of passengers or freight or both?

MR. HUME: Freight, Mr. Chairman. There was undoubtedly the same conflict, and one can read of the same conflict, between the railways and the stage coach, as the railway pushed out westwards on this continent and the railway gradually supplanted the stage coach as the much more economical and much more satisfactory means of transportation. There was certainly a conflict in England between the railway and the inland barge, which up to the advent of the railway was largely the carrier of bulk freight, through the vast network of inland canals in England, which are now largely idle, Mr. Chairman, which is mute testimony to the fact that this conflict gives way to progress and change, and that that has existed for a great many years.

The invention of the internal combustion engine was adapted first of all to a carriage for the movement of passengers and then to a wagon, or perhaps contemporaneously to a wagon, for the movement of goods, and when the internal combustion engine was put on a wagon you had the motor transport vehicle. That may or may not be a step forward in

the evolution of transportation. The industry is so young that it is difficult to assess just what is the importance of that step.

It is sufficiently accurate to state that the adaptation of the engine to the wagon as a means of moving freight and passengers, is a development of the last forty years. In passing I would like just to remark that the regulation of railways in Canada preceded the use of the truck as a large scale medium for the transport of goods in Canada. The trucking industry feels that it has a proud history of development over the last forty years, and I do not intend to take up the time of this Commission by repeating the story of that development in agriculture, in the wartime economy in the recent struggle just concluded, or in the peace-time picture. Submissions on this subject have already been given, and they appear in Volume 50 and they are contained in the Brief filed by the Canadian Automotive Transportation Association. Suffice it to say that within the last forty years truck transportation has established a firm position in the transportation market of today. The public apparently want truck transportation; the public supports truck transportation; and, Mr. Chairman, it is our submission that the public are entitled to and will have truck transportation.

Now then, this development, or the adaptation of the engine to the wagon has produced certain definite changes. It has had a great many effects, some of them bad perhaps, some of them good perhaps; but it has nevertheless produced certain

definite changes in the method of doing business in Canada and I would like to just refer to one or two fairly briefly. The first I think is rather important, and that is a definite change in the method of doing business by the relatively small businessman, and I refer to his ability now to carry a small inventory. He carries a small inventory and therefore he saves on the rental of a large warehouse or storage space. He carries a small inventory, and thereby the necessity of going to the bank if he has not got the necessary funds to finance the purchase and the cost attendant thereon, is eliminated. He does all that because he knows that if he has a particular article on the floor in his store and he sells it, that by taking up the telephone he can receive additional inventory in small quantities from wholesalers perhaps 100 or 200 miles away, overnight by truck. He does not have to buy by the carload any more, and he is therefore able to conduct his business with less capital. That has happened, I submit, Mr. Chairman, throughout the whole country.

Then there is a second, looking at it from the manufacturer's point of view. The manufacturer of a fragile or semi-fragile article, an article of furniture, is able now, if he wants to use a truck, to move his goods from his plant to their destination without expensive freighting. Now, he can pass that saving in the crating on to the consumer or he may put it in his own pocket, but no matter what he does, if he has the choice (all other things being equal) of crating his article before

it is shipped or not crating his article, he will probably decide not to crate it. It saves him money, and he found he could transport this fragile merchandise in trucks with less crating. Now, that is not a criticism of railway transportation, but it is merely a result that has flowed from the growth and development of an instrument of transportation that, because it can be put on pneumatic tires and have hydraulic brakes and one thing and another, is less likely to damage goods in transit. It is quite common today in the trucking industry that fragile articles are loaded on to a truck, covered with burlap, and go to their destination without any more crating or interference than that.

Then there is another tendency that I submit has arisen out of the recent war, and that is a tendency today to disperse manufacturing processes, and it is a development, I submit, that has received tremendous impetus during the war, and where the component parts of an article may be manufactured in widely dispersed areas throughout the country and then brought to a central point where they are assembled into the finished product. Now, the use of the truck in that particular process has indicated that the manufacturer requires a most flexible means of transportation. Trucks are ambulatory, they are not confined to rights of way, they can go anywhere, they can even go where there is no road; and this process of dispersing the manufacturing process and of using truck transportation in order to move these unfinished or partly finished goods, is ^{an} increasing one,

and I only want to refer to one example, but this is not, Mr. Chairman, I submit, the only example: it is only one of many that could be produced. It is the one that is found in Volume 55 of the Transcript at page 10480, and you may remember that there was an account given there of a situation that exists between St. Catherines, Ontario, and Oshawa. The illustration is so graphic that I am going to refer to it again. That is where in St. Catherines, Ontario, they manufacture the front and rear axle assemblies for General Motors cars and trucks, and they go through some sort of assembly line process in the plant in St. Catherines and when they reach the end of the assembly line they are ready to be inserted on the truck or car; but that truck or car is at Oshawa at the General Motors plant one hundred and some odd miles away. So what they did was, they rolled these off on to a transport truck and the transport truck started off for Oshawa 110 or 115 miles away, and when it got there it backed up to the plant and they were rolled off and went to the assembly line again.

Now, the evidence in that volume indicates that the railways decided they would like to have some of this business, and the rate was reduced by the railways, with the result that that freight switched from the truck to the railway. It stayed there five months and then it went back to the truck on an even higher rate, because, as the evidence indicated, the railway was just not physically able to fill the requirements, it was not able to get cars when and where they were needed and move the cars out

on to the main line and on to anywhere they were needed. The whole system broke down, with the result, very significantly, that they went back to truck transportation at an even higher rate. As I say, Mr. Chairman, and I want to emphasize this, that is not a criticism; I am not criticizing the railways. It is just because of their physical make-up that they were not able to fit in into that picture. That is only one illustration.

Now, the last thing I want to mention with regard to these changes that have been produced (and there are others but I don't want to emphasize them unduly) the last one is the matter of speed of transit. Notwithstanding the evidence of certain railway personnel that they believe that the railways can compete with the truck in the matter of speed, I submit that the evidence before this Commission is conclusive that truck transportation is a speedier form of moving goods, taken by and large. It is most significant to refer to a table which was contained on page 9 of the Canadian Automotive Transportation Association brief, which was a survey made of railroads in the United States (and there has not been a comparable one in Canada that we could produce) where it showed that 78.2% of the shippers now using truck transportation /inbound did so because it was speedier, and only 12.2 used it because it was cheaper. Outbound, 72.9% used truck transportation because it was faster, and only 11.6% used trucks because they were cheaper. There is a survey made by railways in the United States indicating that of the people that are now using

trucks that formerly used rail, this large percentage were doing so because it was faster. Again I say, I am not criticizing. It stands to reason that the instrument of transportation being what it is, would not necessarily on reasonable hauls be faster.

I think that the Brief of the City of Quebec which appeared in Volume 43, to which was adjoined, as I recall it, the Board of Trade of the City of Quebec, page 8285, is illustrative of the situation in Canada. You may recall that the city of Quebec claimed that their merchants were using trucks because of the length of time it took to get their merchandise from Montreal and Toronto, whereas the truck was very much faster.

Now, Mr. Chairman, I have referred to those three things, as I repeat again, not in the spirit of criticism but merely to illustrate that there is some reason why the shipper wants to use trucks. Those reasons are real, and I have mentioned, as I say, three of them only to illustrate what is subsequently to appear in my argument.

Now then, I want to make a reference to the scope of the competition. I want to try, if I can, in my argument, to bring this thing into focus. I don't want to under-emphasize it and I don't want to over-emphasize it; but my review of some of these inherent advantages of truck transportation was not for the purpose of convincing anybody who might hear me or read this, that that kind of transportation is any better. It is merely for the purpose of recalling

to the Commission some of the reasons why the public are using trucks for the movement of goods, and they are using nearly half a million trucks in Canada. The number of trucks for all purposes, according to the Dominion Bureau of Statistics has increased from 37,610 in 1922 to 487,000 in 1948. Now, I am not suggesting that all of those 487,000 trucks are competing with railways or steamships for the movement of goods. In fact I want to emphasize that less than 10% of those trucks are competing with the railroads in the movement of goods for hire (and I am speaking for the for-hire industry only) because if you eliminate the privately owned trucks, the farm truck, and the trucks that confine themselves to urban centres, like delivery within a city or an urban area, metropolitan area, those trucks are not competing with railways for freight. They are not interfering with the railway freight revenue position, and it has been estimated (and I think the estimate is about as accurate as one could possibly get) it has been estimated that there are only approximately 43,000 of those half a million trucks engaged in the over-the-road movement between cities for-hire.

THE CHAIRMAN: How many did you say, what proportion?

MR. HUME: About 10%, or I have taken a round figure, estimated as it was by one of the witnesses at 43,000 of those trucks.

I might say in passing that in the United States the figure for the United States according to the testimony before a recent Senate inquiry made by the

Association of American Railroads, is that 5.2% in the United States of the total trucks are competing with the railroads, but the total number of trucks is staggering.

THE CHAIRMAN: You mean, competing for-hire?

MR. HUME: That is right, Mr. Chairman. I am only speaking now of for-hire. The total number of trucks out of which there is that 5.2%, according to this Senate inquiry report that I read, is 7,670,000 trucks. That is the total number of trucks in the United States for all purposes, and of that 7,670,000, 5.2% are estimated by the Association of American Railroads as competing with the railways.

(Page 21288 follows)

In Canada the percentage is double, but of course the number is half a million compared with seven and a half million.

I want to point out again that all of these forty-three thousand trucks in Canada are not competing with the railroads for freight, because a great many of these are serving communities that have no rail service at all or, if they have rail service, they may have rail service only once or perhaps twice a week. A great many others are engaged in a type of freight haul that is not competitive with railroads, even though it may be ^{an} over-the-road movement. I refer, for example, to one movement of which I know personally, namely the movement of sand and gravel from gravel pits in the urban centres. That is an over-the-road movement. That is not competitive with the railroads because there is no railroad anywhere near the particular gravel pits of which I have knowledge. There seem to be a great many like that. Then there are the trucks that are moving fluid milk and live stock from farms that are not located on rail lines, into urban centres and so on. If you reduce the total number of these commercial over the road trucks by some sort of estimate of the number that are not in competition with the railroads - and I have no accurate figures on it; I do not think anybody has any accurate figures on it - I submit that that 43,000 will be reduced perhaps to 20,000. Of course I do not know, and I do not think anybody knows. But I think it is a sufficiently accurate figure for the purpose of this argument and for this inquiry here to state that today in Canada there are somewhere between 20,000 and 30,000 for hire trucks moving goods, intercity, which may be to some extent at least competitive with the railroads for the business.

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COMMISSIONER ANGUS: Is that a number which is tending to increase?

MR. HUME: It has been steadily increasing, Dr. Angus; and my submission is that it will continue to increase. I think the figures showing the growth of total trucks in Canada, from my figure of 37,000 in round figures in 1922 to nearly half a million in 1948, is indicative that the percentage is probably increasing; that is to say, I do not think that these additional thousands and thousands of trucks are all going to firms. I think there is probably a balance between ^{the} relationship, and therefore that amount of over-the-road trucks is increasing and I submit will increase. It has reached large proportions in the United States.

COMMISSIONER ANGUS: I mean the number, the nucleus that is competing with the railways.

MR. HUME: In the Province of Ontario in the last ten years the number has doubled, and that may be indicative of the whole of Canada. Ontario is, I suppose, the most highly mechanised centre in Canada. I think the number will continue to increase just so long as the public continues to demand the service and support truck transportation.

There are certain persons who have appeared before this Commission who feel that that increase in number is a good thing. I should like to just refer in passing --

THE CHAIRMAN: That the increase in numbers is what?

MR. HUME: Is a very good thing for Canada. In passing I should like to refer to the evidence of Mr. E. J. Young, who, as the Commission will remember, was a former director of the C.N.R. I have a note that he stated at page 14144, which is to be found in volume 69, as follows:

"It would be a good thing for the country if there were sufficient transportation of other forms, truck and water, whatever you can get, to supply the essentials

of life even if we did have a railway strike that could not be settled..."

THE CHAIRMAN: He meant in the case of a railway strike?

MR. HUME: Yes. He was referring to that particular point of view.

The railways through their association and through their witnesses have urged and argued from the railway point of view - which is, of course, natural - that something should be done about the trucking industry. The railway unions want the trucks off the road. The Railway Association urges the setting up of some sort of tribunal that will ultimately result in a mileage restriction. I intend to approach this problem from the point of view of the association I represent, and submit then also the public's point of view. In asking the question what should be done about the regulation of the trucking industry from that point of view, I submit that we come to the inevitable conclusion that artificially to restrict one branch of transportation for the benefit of another is not in the public interest.

These regulations under which the railways stand were imposed, as I have already said, before the advent of truck transportation. The trucking industry therefore cannot be blamed for those regulations, and the trucking industry is absolutely opposed to the imposition of similar restrictions as the conditions that gave rise to these regulations do not exist in the trucking industry, and the imposition of such regulations would be merely artificial restriction.



for the benefit of railway economy. The trucking industry can only conclude that the persistent cry for regulation raised by railway witnesses must mean regulation

or by a federal authority, because the industry is already regulated in each province to the extent that the government and the people of those provinces desire to regulate that industry. Forced to the conclusion that this cry for regulation must mean regulation by the federal government, the industry is also forced to the conclusion that the railways must expect that that regulation will be of a restrictive nature. Otherwise there would be no point in this cry for federal regulation. It is not difficult to appreciate why the trucking industry is therefore violently opposed to regulation by the Dominion Government which is in the railway business.

Mr. S.W.Fairweather of the Canadian National Railways, who has studied this matter for twenty-six years, somewhat upset the unanimity, I suggest, of this call for restrictive regulation by stating in Volumes 109 and 110 of the transcript that he did not believe such restrictive regulation was the answer. Appreciating the fact that the Canadian public can now purchase their own transportation and that private shippers are a very important factor, he stated at page 20121:

"But I do want to say this, that restrictive legislation or restrictive regulation is not the answer to this problem; that has been tried many places and failed."

He defines "restrictive legislation" on page 20139 as legislation that prohibits trucks or competitive forms of transport from operating beyond a certain area, or things like that. I submit that this realistic view of this experienced railway witness is the complete answer to the call for federal regulation by the Railway Association of

Canada whose witness, Mr. Gaffney, you may recall stated as follows, in answer to a question. . . I said: What would you say if the Dominion Government got this power to regulate, and then said: "We are going to have the same kind of regulation as they have in Alberta. You can go anywhere you like. He said, "We would have to take our medicine." Surely he must expect some sort of restriction or he would not be so greatly interested in having that kind of regulation. It undermines Mr. Fairweather's evidence; it completely undermines ^{call for} the regulation issued by the Railway Union, by the Ship-By-rail Association and any other railway witnesses who so expressed themselves. I submit also -- and I shall refer to this later -- that it undermines the proposed amendment of the province of Saskatchewan to regulate interprovincial for-hire trucking.

I submit,
It is not any wonder that the provinces of British Columbia, New Brunswick, Alberta, Prince Edward Island and Quebec have stated, either before this Royal Commission or in the public press, that they are not willing to surrender their jurisdiction over truck transportation to the federal government. I submit that this is far more than "mere pig-headed constitutionalism". It is a realization that the only reason that the railways cry for central regulation of the trucking industry is to preserve and to maintain their own situation.

In the memorandum issued by Mr. Covert, covering the matter of argument by counsel, it was suggested that counsel should submit proposals as to what should constitute Canada's national transportation policy. I do not propose to discuss any aspects of this national transportation policy except in relation to the trucking industry.

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I do submit, however, that it is possible to enunciate a national transportation policy in Canada without the necessity of all forms of transportation being under one central regulatory authority. If the enunciation of a national transportation policy carries with it the imposition of certain restrictions, to be all integrated, then it may be necessary to have them all under one authority. But I suggest that that kind of national transportation policy or that motive behind a national transportation~~xx~~ policy is not in the best interest of Canada. . . . I see no objection to the federal government of Canada issuing a statement of national transportation policy dealing with the various agencies of transportation over which the federal government have control, and I see no objection to the various provincial governments in Canada issuing a statement as to their policy with regard to the transportation agencies under provincial control. I should like to state some views on this national transportation policy in relation to the trucking industry.

I submit that the national transportation policy should ~~pay~~ have certain ingredients .

THE CHAIRMAN: Certain what?

MR. HUME: Certain ingredients; and one that it should not contain, I submit, is this. It should not contain a conflict of public interest versus railway interest, nor of public interest versus trucking interest. If this is accepted as a basic necessity of the transportation policy, then I submit that any statement of policy, or any regulations issued under such policy which adversely affect the railway interest, the public interest or the trucking interest, should not and would not be acceptable to the people of Canada.

I therefore submit that the national transportation policy must be one that promotes the inherent advantages of all transportation agencies in Canada, without restricting one for the benefit of another.

I used the phrase "inherent advantages". I should like to discuss for a moment that phrase. Reference has been made before this Commission on several occasions to the inherent advantages of a certain mode or type of transportation. It is not difficult to see that one transportation agency may have an advantage in a particular situation. For example, where time is the sole, or the most important factor, the aeroplane will often be the most advantageous. For less than carload lots, truck transportation has the advantage in many cases. Highway transportation might be preferable when partially finished products or materials need to be shuttled between manufacturing plants, as I have already described, or when multiple handling would be required for other modes of transportation, and so on, then it might not be in the interests of the shipper. Where the points of production and delivery of heavy commodities are located upon navigable waters and where the time element is not an important factor, then water transportation may be the advantageous method to use. When it comes to shipping large quantities of oil or gas over long distances over land, then the pipeline will have certain advantages, even though it may replace coal as a fuel, and thereby reduce rail traffic.

But the most important thing to remember, I submit, when you are talking about inherent advantages, is the fact that these advantages of any one system of transportation never reach a fixed position because technical improvements are always going on, and new equipment and methods are constantly changing, and the shippers' requirements are completely different in all cases. It is plain, I

submit, that the type of transportation which is most advantageous to a particular shipment depends upon many factors and is a combination of these factors, as a general rule. That makes the shipper say, "I will buy this kind or that kind of transportation."

If I may state it another way, it is a combination of these factors as a general rule, that determines which transportation agency the shipper decides to buy, and it should be a most important part of the national transportation policy that the various persons who use transportation agencies -- the consignor, the consignee, the traveller -- be free to select whatever agency they prefer, because these people, the Canadian public, are in the best position to determine which is the most advantageous to them. They will determine which mode has the most inherent advantages for their needs, at a particular moment; and no Board regulation can be drafted to fit that situation. The railway unions say, "We see no justification for a traffic movement on the highway that parallels a railway line". It is not surprising that they take that position. But nevertheless, I submit that is not a very realistic view of these inherent advantages, because a particular shipper may say, "For reasons which are best known to me, I do not want to use rail, I want to use truck"; or he will say, "I do not want to use truck, I want to use rail." You must leave it up to the shipper to decide.

I want to just take a specific case, if I may. It is a hypothetical case, but is one that illustrates the point. I am taking the case of a man in the city of North Bay, Ontario, who has refrigerators that he wants to ship to the city of Montreal, in this hypothetical case. He has the job of selecting the transportation agency to fit his

requirements. Because of the weight of these refrigeration~~ss~~,
air is out of the question. Water is out of the question
also, he being situated where he is.

(Page 21298 follows)

Let us say he is reduced to two agencies, the railway and the highway. Probably he will select the agency that is least expensive to him. That is probably the only thing he will be concerned with. If all other things are equal I say probably he will select the least expensive agency, and if the rate quoted for truck transportation is cheaper than the rail rate he will probably ship by truck. If the rate quoted for rail transportation is cheaper than for truck then the refrigerators will go by rail.

On the other hand, he may decide irrespective of the price that he can get his refrigerators to Montreal faster by truck than by rail, and that may be the factor that determines him in that case.

COMMISSIONER ANGUS: In saying this you really have been considering a year of normal traffic volume, I suppose. Have you considered the case of what would happen in years of low traffic volume, depression years? Do you think in such years the tendency of the trucks would be to keep fully occupied no matter what cut they had to make in their rates?

MR. HUME: I think so, in those provinces which do not impose rate regulation. Ontario is one and Alberta is another. There are a great many thousands of these men across Canada. They are in business. Their whole business is their truck. Their office is under their hat, as somebody has said. They are probably owner driven vehicles, and their tendency is to keep busy.

On the question of the hypothetical case between North Bay and Montreal, it may be that the truck rate will be considered lower than the rail rate. In my illustration I am not stating that it is lower. I am merely trying to point out that, all other things being equal, it may or may not be lower. If one is lower than the other

probably that is the one that will be used. Therefore rate has an important part to play in it.

I went on to suggest that it may be that speed is what he wants and rate does not matter. Perhaps he is not paying the freight bill. Perhaps the consignee is the one who is going to pay the charges and the shipper does not care. He wants to get them in Montreal faster than he can get them there by rail and therefore he may select the truck because it is speedier. I am assuming it is speedier in that case.

It might be that the shipper might decide he wanted to ship his refrigerators by truck because he can load them in the van just as they are with a bit of burlap over them and no crating. He does not have to worry about that. They can be transported to the warehouse in Montreal with only two handlings, and that may be the thing that decides him that he wants to ship by truck, and therefore he may select truck transportation irrespective of price or rate.

On the other hand, he may decide he will ship to Montreal by rail for reasons that he would decide would be the best method for him. One of them might be that he wanted to get them there on Monday morning and trucks do not run on the highways on Sundays and trains run on Sundays. Therefore he may decide to ship by rail.

As I say, I am only trying to illustrate in this argument that there are certain inherent advantages, and those advantages do not depend on any hard and fast rule that you can lay down or say that you can run so many miles. There are so many factors that weigh in the mind of a shipper who ships by truck, whether it is in his own truck or whether he hires a truck, that I suggest you cannot lay down a rule for the Canadian public to determine what

is and what is not the best inherent advantage for a particular movement.

I submit when one speaks about inherent advantages one must bear in mind that these advantages depend upon so many factors that I think the Canadian public can be depended upon to select that form of transportation which has the particular inherent advantage for which that particular shipper is looking at a particular time.

Coming back again to the question of a national transportation policy, I submit that it should be an important ingredient of the national transportation policy that there be no discrimination as between carriers, and by governments as against carriers. I say that provincial governments, who generally do not have jurisdiction over railways, should not discriminate against railways, and I do not think they do. By the same token I suggest that the federal government, which has no jurisdiction over the trucking industry, should not discriminate against that industry. Yet, Mr. Chairman, this Commission has heard examples of discrimination where the federal government have by regulation or otherwise discriminated against highway transport for the benefit of the railways. Perhaps this is not too surprising because it must always be borne in mind when considering the question of highway and rail transportation in Canada that the federal government in Canada is substantially in the railway business.

When reference is made to the United States of America and the system of regulation in force in that country it must always be remembered that the American government is not in the railway business, and it is generally conceded by all who have studied the problem that the regulations in the United States are impartially

administered by the government and their tribunals between all methods of transportation.

What is the situation in Canada? References have been made in the submission of the Automotive Canadian Automotive Transportation Association, which appears in Volume 50 of the transcript, citing some examples of this discrimination against which the trucking industry objects, and it is no doubt one of the reasons why this industry is so absolutely opposed to federal control. One of the examples cited was on the matter of feed grain moving from lake ports to inland points to millers as to which up until a short time ago, about last August, millers received a subsidy, and it did not matter whether that grain moved by train or by truck. Then that was changed by a regulation of the Department of Agriculture a short time ago and the miller now receives a subsidy only if he ships or receives his feed grain by rail.

THE CHAIRMAN: Was any reason given for the change being made?

MR. HUME: No reason at all; trucks were just cut off from it arbitrarily..

THE CHAIRMAN: Was any attempt made to find out why that was done?

MR. HUME: Yes, attempts were made, and my information is the indication was they wanted to divert that grain back to the rails.

THE CHAIRMAN: It was done on purpose.

MR. HUME: Yes. One would have great difficulty in convincing members of the trucking industry that this regulation was imposed for any other purpose than that which I have just explained. Millers whose business establishments do not happen to be on a rail line and who have to ship by truck receive no subsidy.

THE CHAIRMAN: That is still going on?

MR. HUME: I understand so; there has been no change. Representations are being made by the industry and by millers, but so far as I am aware no change has been made in that situation.

Then there is the matter of national parks. Both the provinces of British Columbia and Alberta no doubt will have a great deal to say about national parks. I do not intend to labour the point. In Volume 15 of the transcript at page 2827, the British Columbia Fruit Growers complained bitterly about the ban ~~on~~ on trucking through national parks. Volume 50 of the transcript of evidence contains the evidence of Mr. Taylor from the province of Alberta, and at page 9644 contains a reference to this problem. In fact there was read a newspaper clipping originating from the public press in British Columbia at that page indicating that the government of that province were then -- and this is ancient history now -- hesitating at the time the evidence was being given in the matter of the trans-Canada highway until a clear statement was made with regard to the policy of the Canadian government on the matter of trucking through national parks. I have not seen any such clear statement but I do know that an agreement has been reached so that possibly the matter has been settled. I will leave it to counsel for the provinces of Alberta and British Columbia to deal with that. They may have some more information in their argument. It is interesting, however, so far as the attitude of the trucking industry is concerned on the matter of discrimination.

At page 9700 there is contained a copy of a letter written by Mr. W. J. F. Pratt on behalf of one of the federal departments of government indicating in that

letter, which is in the transcript, that the ban on trucking through national parks was motivated at least in part by a desire to protect Canada's national railway.

THE CHAIRMAN: What department was involved there?

MR. HUME: The Department of Mines and Resources. I can get the letter if you would like me to review it. It is in the transcript at page 9700. While that is being looked up -- and I will come back to it -- I want to mention the last item of discrimination about which the trucking industry complains, and that is the matter of bonded freight. A statement as to the method under which this freight moves in Canada by rail was made by counsel for the Canadian Pacific Railway Company and appears in Volume 55 of the transcript at page 10675. A statement as to how the freight moves into Canada by truck appears in volume 67 at page 13850. Mr. Chairman, I suggest that a casual comparison of the method by which freight is handled in both cases will indicate that there is a very strong element of discrimination against the trucking industry. I would direct the Commission's attention to a statement made by the Honourable C. D. Howe in 1940 which appears in the submission of the Canadian Automotive Transportation Association appearing in Volume 50 in which it was stated by Mr. Howe:

"At the present time the dominion government maintains a slight deterrent" --

THE CHAIRMAN: Maintains what?

MR. HUME: A slight deterrent.

"At the present time the dominion government maintains a slight deterrent against trucking across international boundaries by its policy of withholding the privilege of bonding goods

moved in by truck."

That shows quite clearly one of the reasons why the policy of maintaining a deterrent was instituted.

Mr. Chairman, the matter about which we were speaking before having been looked up, may I say that Mr. Pratt was private secretary to the Minister of Mines and Resources. The letter was written by him and, as I say, was put into the transcript at page 9700.

THE CHAIRMAN: We have the letter there.

MR. HUME: The letter is in the transcript.

COMMISSIONER ANGUS: Do you consider that the Maritime Freight Rates Act is discriminatory against trucks?

MR. HUME: No, Dr. Angus, the trucking industry that exists between the province of Quebec and the maritime provinces has never complained as to any element of the Maritime Freight Rates Act. They have issued no statement and have never complained. Therefore I would take it from that that they do not consider it as discriminatory in any way. Apparently they are able to keep busy, and they have sufficient business to support and maintain them, and they are not upset about these statutory rates.

I should like to conclude this short review of two or three of the discriminatory matters that worry the trucking industry by suggesting that a national transportation policy if it promotes the inherent advantages of all forms of transportation by recognizing that the shipper will select that agency which has certain inherent advantages for him; if it prevents discrimination against a particular form of transportation; if it prevents destructive competitive practices designed to eliminate or cripple any one form of transportation; if it ensures

to the members of the Canadian public the privilege of selecting that transportation agency that will render that member of the public the best service, and if it encourages the growth of competitive transportation agencies in Canada from the standpoint of national defence and

the requirements in the event of war and of peacetime economy then, Mr. Chairman, I submit that that national transportation policy, if one has to be enunciated, can be enunciated without the necessity of having all forms of transportation under one sort of control.

(Page 21308 follows)

Mr. Chairman, I would just like to refer again to this regulation of the trucking industry. It would appear to me from the many references in the Transcript that the word "unregulated" (at least to railway personnel) does not mean what I have always understood it to mean, that as far as they are concerned it must mean unregulated by the Board of Transport Commissioners. In almost every instance when the trucking industry was referred to in the railway evidence, they speak of unregulated competition. Mr. G. A. Walker, K.C., at page 13362 --

MR. SINCLAIR: What was that?

MR. HUME: I have just had what I think should be the last interruption from counsel. As I understand that memorandum that was issued, there would be no interruption of counsel, and I refer to this only to make sure that it is not repeated. I have been interrupted twice already.

MR. O'DONNELL: Surely we can have a page reference once in a while without somebody saying I have interrupted.

MR. SINCLAIR: That is all I said, what was the page reference. It might have been any one of 20,000 pages of Transcript.

THE CHAIRMAN: Go on.

MR. HUME: The statement of Mr. G. A. Walker, K.C., in Volume 64, is typical, when he speaks of the rapid growth of unregulated competition. The Railway Association of Canada kept referring to "unregulated competition". The brief submitted by the Railway Union talked about

"unregulated competition". The brief submitted by the Ship by Rail Association in Volume 31 talked about "unregulated competition". Mr. Gordon in Volume 98 at page 18372 referred to the trucking industry as "unregulated".

THE CHAIRMAN: Is it not a fact that the word "unregulated" there meant without tariffs being established?

MR. HUME: It could not be, Mr. Chairman, because there are many provinces, or some provinces in Canada where tariffs are set and established for the trucking industry. I refer to British Columbia for example, and Manitoba is another, and Quebec is another. I am only pointing out that these references throughout the Transcript to the great unregulated competition that they refer to, that the word "unregulated" as they are using it, in order that this matter may be determined, that that word "unregulated" must mean, according to their interpretation, unregulated by the Board of Transport Commissioners.

Because of course the industry is regulated. There are provincial regulations at least on the Statute books of every province, and in most of the provinces upon which evidence has been given there has been fairly complete information given to the Commission as to the kind of regulation that exists. I would like to refer to Volume 13, for example, commencing at page 2432 and following, to the evidence of Mr. W. A. Crothers, Chairman of the Public Utilities Board of the Province of British Columbia, which gave very complete evidence

as to the kind of regulation that is enforced in that province which, the Commission may remember, covered regulation of rates, regulation of routes, safety regulations and a complete set of regulations covering the trucking industry generally in that province. There is practically a whole volume of the Transcript devoted to that information. I am not going to review it, except to say that the evidence was in that province, as I read it, that the rates were filed by a carrier, that is, a transport highway carrier, they are checked over the the Department, and the application for the establishment of rates is based in that province on what they call the cost of service principle.

THE CHAIRMAN: What province is this?

MR. HUME: Province of British Columbia
I am speaking of, at page 2432.

THE CHAIRMAN: Does this system apply to the whole of that province??

MR. HUME: I understand from reading it (I was not there when the evidence was given that is in Volume 13) but I understand that there are certain sections of the Province of British Columbia where they have no regulation, that is, the routes are not regulated; but in any important centre, down where the populations are and the urban centres are, I understand it applies to all trucking, that is for-hire trucking, in that province.

Mr. William Brown, Superintendent of Motor Carriers of the same province, at pages 2541 and 2542 in Volume 14, gave evidence as to the

truck rates in British Columbia and stated in his evidence that they were almost the same as rail rates. Because of the regulation in that province, I submit that there cannot be any suggestion that there is any kind of rate war between railways and the trucking industry in British Columbia. I should also like to mention in passing, although it is out of place perhaps in this section of my argument, but in dealing with this particular part of the Transcript, that at page 2628 Mr. Brown said that the cost of the highways in British Columbia was borne by the users, and that in the opinion of his province and himself the trucking industry was paying its fair share of highway costs.

In the province of Alberta they filed a brief called: "Highway Transportation in Alberta," and it was read into the Transcript in Volume 63 at page 13322, and the cross-examination of the witness on behalf of that province occurred at page 14388. It was the view of the Province of Alberta and the witness, Mr. Harries, according to their submission, that highway transport should not be regulated as to rates or required to prove public convenience and necessity before being allowed to obtain a license, but that that Province has complete regulations with regard to matters of safety and there are regulations also providing for the routes over which the carrier may move. There was also reference to a part of their regulations at page 14412 (and I am quoting):-

"That no carrier shall refuse to carry the commodities which are stated in the owner's certificate if the same are offered in a proper condition, unless at the time the public vehicle is loaded to capacity, or, owing to climatic conditions, the property to be carried would perish in transit. ."

With regard to the Province of Saskatchewan, while there has not been much put into the Transcript as to the regulations, nevertheless they do regulate the trucking industry in that Province. They have regulations with regard to safety matters, they regulate their rates, and they require a certificate of public convenience and necessity.

The Province of Manitoba also has regulations. They regulate matters of safety, they regulate rates, they require a certificate of public convenience and necessity, and they have a complete set of regulations, I submit, covering the trucking industry. It is perhaps interesting to note in passing that in the Province of Manitoba when the rates for the trucking industry were originally set up by the Province, they were based on rail rates. When the railways received an increase of 21% in the rail rates, the trucking industry applied to the proper tribunal there in the Province of Manitoba for a similar increase, hoping that their rates for trucking would become equal to the rail rates again. The Board in that Province determined, after hearing evidence, that the trucking rates should only rise 15%, so that you had in that Province truck rates

that were 6% below rail rates, but that was no part of the trucking industry, because the Government decided that the trucking industry would only get the increase I have indicated a moment ago and not the whole 21%.

THE CHAIRMAN: When you say the "Government" you mean this regulating body?

MR. HUME: Yes, Mr. Chairman, because they were acting under the authority of their particular Act and the authority of the Legislative Assembly.

THE CHAIRMAN: Yes, what was this body called?

MR. HUME: The Manitoba Public Utilities Board (Motor Carrier Branch) is the full name of that body that regulates the industry in that province.

THE CHAIRMAN: Any report from that body to the Manitoba Government?

MR. HUME: I don't know, Mr. Chairman. That was the case with rates, however, certainly during that period. I don't know what has happened with this recent increase, but at the time I was getting my information for this, trucking rates were below rail rates -- no question about that -- but it was a matter of Government control there, and it was a matter over which industry had no control.

Coming to the Province of Ontario, we have heard that they have a very complete set of regulations, covering matters of safety and under which an operator is required to obtain a certificate of public convenience and necessity before he can operate as a public carrier. The application for such a license is made to the Ontario Municipal Board

and there the various railways and trucking companies and others may oppose the application or support it and, after hearing the evidence, the application is either granted or refused, depending upon whether the applicant has been successful in establishing that he is entitled to obtain a license to operate between two given points, based upon public convenience and necessity. But, in the Province of Ontario there is no regulation of rates. That Province, like the Province of Alberta, does not believe in the regulation of truck rates and apparently believes that those rates will find a level based on ordinary business competition. There is no monopoly. Routes are served by more than one operator, and apparently the Province believes that the ordinary business competition between its carriers will find a level of rates that gives a fair return to the operator and is also fair to the shipper.

(Page 21314 follows)

In the Province of Quebec we find there is a set of regulations, as to which Mr. Camille Archambault gave evidence which appears in volume 55 at page 10502, and the translation of that evidence appears in volume 57 of the transcript.

In the Maritime Provinces there has not been a very great deal of evidence as to the type of regulation which is imposed or which is at least on the statute book, but in any event, it can be said, I think, that the trucking industry in those provinces is certainly regulated with regard to matters of safety, and is regulated to the extent that the people of the Maritime Province want them regulated, otherwise they would change their Acts.

It cannot be denied that the regulations imposed by the various provinces in Canada are regulations imposed by the Legislative Assemblies of the various provinces, and under our system of government they are therefore the regulations imposed by and desired by the people in those provinces, who are the people of Canada. They are the regulations, I submit, on the trucking industry desired by the people of Canada under the framework of the British North America Act, but they may not be the regulations desired by railway associations or unions or railways themselves. If the people of the Province of British Columbia decided that they wanted another kind of regulation, the Act would be changed and other kinds of regulations would be imposed; similarly in the Province of Alberta or any other province that one might care to name in the Dominion of Canada. The point I wish to make and emphasize is this, Mr. Chairman, that the regulations on the trucking industry in Canada are regulations imposed by competent Legislative Assemblies that have the support of the people in those

provinces, and they are therefore the regulations desired by the people of Canada. These regulations are administered by persons in these provinces who are experienced in highway matters in these provinces, and the regulation and control of the industry in those provinces is by personnel whose background has not been essentially railway.

It is not surprising, Mr. Chairman, that the railways complain, through the Railway Association of Canada, that the Provincial Legislatures do not carry out the railways' wishes in these matters of regulation and the granting of certificates and so on. I say, it is not surprising to find these complaints, because the Legislatures of the various provinces to whom the railways make their requests and complaints are not so concerned with railway problems as they are with the public interest, and there is a distinction between the two.

After all this call for "regulation", Mr. S. W. Fairweather, who studied the problem for a great number of years, stated in evidence that restrictive regulation was no solution.

THE CHAIRMAN: We will take a few minutes off now.

(Recess)

THE CHAIRMAN: All right, Mr. Hume.

MR HUME: Mr. Chairman, I should like to say a word about this question of surrendering jurisdiction. The Provinces of New Brunswick, Alberta, Manitoba, Prince Edward Island, and I think British Columbia and Quebec, have stated, either before this Commission or in the public press, that they are not willing to surrender their jurisdiction over trucks to the Federal authority, but that they

intend to retain it. The Province of Saskatchewan, however, in its submission, which is found in volume 52 of the transcript of evidence, stated that they are willing to surrender their jurisdiction over trucks to the Federal Government provided that the Federal Government would build hard-surfaced roads in the province and that their revenue position would not be affected.

Mr. Chairman, I should like to examine that statement of the Province of Saskatchewan very briefly. The evidence from the Province of Saskatchewan indicated that the soil condition in the province, plus the fact that the population was thinly spread over a wide area and the economy of that province was such, that it was impossible for Saskatchewan to construct hard-surfaced roads. At page 10036 Dr. Britnell, the witness for the Province, stated that Saskatchewan would find it almost impossible to build hard-surfaced roads. Now, I think that if the statement of the Province is examined in the light of that situation, especially when the Province makes it clear that they are only surrendering their jurisdiction over rates and do not intend to prejudice their revenue position or their authority to legislate as to safety matters, such as the length of a truck, the width, and the lights it shall carry, then I say, when you examine that Province's willingness to surrender jurisdiction in the light of that situation, you are forced, I submit, to the conclusion, firstly, that the Province of Saskatchewan will only surrender jurisdiction if the Federal Government will come into that Province and build these hard-surfaced roads, which is unlikely, apart from the Trans-Canada Highway; and, secondly, which flows from the first conclusion, that because this is unlikely, the Province does not expect to

have to surrender any part of its jurisdiction. They have made it clear that they are only willing to surrender jurisdiction over rates, which they themselves control now and can therefore control to any degree or level they wish. I repeat, therefore, Mr. Chairman, that it is my submission that in so far as the Province of Saskatchewan is concerned, it is the only Province which has come forward to say that it is willing to surrender jurisdiction over trucking rates, and, secondly, that the conditions under which they state they are willing to make that surrender make it clear that it would actually never come to pass.

I should like to submit in addition that there is a very serious doubt as to whether that Province has the power to surrender jurisdiction in a matter in which they are given exclusive jurisdiction in section 92 of the British North America Act; and, while I do not intend in this argument to launch into any legal argument, I do want to refer to a case which was decided in Nova Scotia, entitled RE Bill 136 in the Nova Scotia Legislature, 1947 -- that is the name of the case.

THE CHAIRMAN: What is the name?

MR HUME: RE Bill 136 in the Nova Scotia Legislature, 1947. It is reported in 1948, 4 Dominion Law Reports, Part I, at page 1, wherein the Nova Scotia Supreme Court held that a provincial legislature cannot delegate to the Dominion Parliament for exercise by the latter, any of the legislative powers exclusively vested in such legislature by the British North America Act.

THE CHAIRMAN: That was decided a long time ago.

MR HUME: Yes; and, similarly, that the Dominion Parliament could not delegate its legislative powers to a provincial legislature. I am not aware that this case has

been appealed, and I believe that this is the latest pronouncement on the subject. I am only referring to it as the latest pronouncement in the light of the Saskatchewan proposal. There are numerous cases cited in the learned judgment, among which is a reference to a case on the subject, Canadian Pacific Railway v. Notre Dame de Bonsecours, 1899 Appeal Cases, at page 367, where the suggestion was apparently made by counsel that one legislative authority could delegate its powers to another, and was disposed of by Lord Watson -- considered, as I recall it, in the Nova Scotia judgment to be obiter dicta in one sense, but at least while it was obiter it was nevertheless good law, and it was applied in that case, where Lord Watson said:

"The Dominion cannot give jurisdiction or leave jurisdiction with the Provinces. The Provincial Parliaments cannot give legislative jurisdiction to the Dominion Parliament. If they have it, either one or the other of them, they have it by virtue of the Act of 1867. I think we must get rid of the idea that either one or the other can enlarge the jurisdiction of the other or surrender jurisdiction."

I therefore leave this matter, Mr. Chairman, with the submission that the Province of Saskatchewan, no matter what it said in its submission, has not power to surrender its jurisdiction over the trucking industry to the Dominion Government.

Now, Mr. Chairman, I should like to turn for a moment to the question of interprovincial and international trucking for hire. I think it is advisable before considering this in argument first of all to consider the size of these operations, the extent of these operations, and I submit that they are in the total picture of things really

insignificant. I have already filed as Exhibit No. 175 rates published for international traffic. The exhibit speaks for itself. It originates in Buffalo, and it shows the publication of international traffic. I do not propose to deal very much with international traffic, but I want to confine my remarks to interprovincial traffic, because international traffic so far as ^{the} railway competitive problem is concerned I do not think is as serious as the interprovincial traffic.

The number of trucks engaged in international and interprovincial traffic in the Province of British Columbia is fifty. This will be found in volume 54 of the transcript, according to the evidence of Mr. Gene Buckman. I have not the page number, but it is in volume 54.

COMMISSIONER ANGUS: Q. Is that in British Columbia?

MR HUME: In British Columbia. I am going right across Canada now, picking out of the transcript where these numbers are given, and I am going to total them up.

COMMISSIONER ANGUS: Would you expect that number to be deceptively low because of the rule about the National Parks?

MR HUME: It could be, yes; yes, it might be, Dr. Angus. That does include, though, international traffic moving south across the border into the United States. That number is fifty. The number of trucks similarly engaged in the Province of Alberta is to be found in their brief.

THE CHAIRMAN; How many did you say in British Columbia?

MR HUME: Fifty.

THE CHAIRMAN: That is, engaged both in international and interprovincial traffic

MR HUME: Yes, Mr. Chairman.

The number of trucks similarly engaged in the Province of Alberta is to be found in their brief entitled "Highway Transport", which was filed in volume 63, wherein they give the list of vehicles engaged in the different types of the trucking industry in that province, and when they come to international and interprovincial they point out that there are only thirteen. In Saskatchewan, according to my instructions -- this is not in evidence, but I have attempted to find this on my own -- the number is thirty-nine. In Manitoba the number is seventy-three, and this is to be found in the evidence by the Province of Manitoba, volume 46, at page 8853.

COMMISSIONER INNIS: There is no indication as to which border they cross?

MR HUME: They cross both ways, sir.

COMMISSIONER INNIS: But you have not divided them?

MR HUME: No, I have not divided them, Dr. Innis.

Up to that point, Mr. Chairman, my total comes to 175. In Ontario the number is stated, in volume 55, according to the evidence of Mr. Goodman -- I have not the page number -- as 373 power units.

THE CHAIRMAN: What do you call them?

MR HUME: Power units. That is the tractor and the trailer. One tractor may have two or three trailers that it pulls at different stages, but there are 373 units, that is, able to cross the borders under their own power.

According to the evidence of Mr. Camille Archambault in volume 55 as to Quebec, the number is 680, and my instructions are that that is both tractors and trailers, so that the number seems twice as large, but actually the situation is not quite in those proportions. But, taking

that as the total number of power units -- which I know that it is not, but even assuming it is -- my total is now 1,228 international and interprovincial trucks in Canada.

THE CHAIRMAN: You have not mentioned the Maritime Provinces.

MR. HUME: I was just coming to that, sir. I have no figures for the provinces of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland. I would not suspect, of course, that Newfoundland would have any trucks engaged in this kind of traffic, and I do not know the figures for the Maritime Provinces. I think ~~probably~~ probably one of the reasons is that the Association that I represent, up until just recently anyway, had no representation; there was no organization down there, and it was almost impossible to get these figures without going to almost every operator and saying, "Do you operate interprovincially or do you not?" But for the purposes of this argument, if we eliminate the Maritime Provinces from our consideration and deal solely with the area of Canada from British Columbia to Quebec, the total of 1,228 is the total number of trucks. But that figure, too, needs explaining, because most of these trucks are licensed in both provinces, and when you have 73 trucks in Manitoba, 73 vehicles engaged in this traffic in Manitoba, some of those 73 have Ontario licence plates, some have Saskatchewan licence plates and some have American licence plates; but, ignoring the American licence plates, you see that this figure of 1,228 includes the same vehicle in it twice in a very great many cases, because if you take a particular vehicle of Manitoba that operates also into Saskatchewan, it is in the Saskatchewan total and it is also in the Manitoba total.

COMMISSIONER INNIS: Do they pay for both licence plates?

MR. HUME: They pay for both licence plates. Between Ontario and Quebec the vehicles must carry both plates; they pay for both licence plates, and they have to be licensed by the regulatory boards in both provinces.

I am only discussing now the size and scope of this traffic, and I suggest that ^{with} a great many of these vehicles the total of which I have mentioned as being slightly over 1,200 vehicles, you get a duplication -- I do not know whether it is complete, but certainly I think that if you came to the conclusion or estimated, which is the best you can do, you cannot get the final figures without, as I say, going to almost every operator, of which there are some hundreds, and you are forced to the conclusion that there are only five or six or at the most seven hundred engaged in this movement across the border from British Columbia to Quebec.

I then suggest that the number of for-hire trucking vehicles engaged in this movement is relatively very, very small. Out of half a million trucks in Canada, out of about 20,000 trucks competing with the railroads, you have a figure of under a thousand, I submit, engaged in interprovincial and international movement. And when you eliminate the trucks that are engaged in international movement, as to the number of which I have no idea, although there must be a certain number -- I mean, we know, you just have to travel around to see them crossing the borders and going to border points -- that number may be reduced even below 500. I am only mentioning that to point out my attempt to keep this particular matter, as I say, in focus, so that there is not the suggestion

in the mind of anyone that this is a very large movement. We in eastern Canada who live here are apt to regard it very much more seriously because I suppose it can be honestly said that the greatest impact of this traffic is between Ontario and Quebec, but, taking the country as a whole, as I have been forced to eliminate the Maritime Provinces because of my lack of information on it, I submit that the total freight movement across the international boundaries is relatively small.

COMMISSIONER INNIS: Is not the smallness in itself a disturbing consideration? May it not point to the fact that restrictions on interprovincial traffic are such that the numbers are cut down?

MR. HUME: That may be quite true. That is, Dr. Innis, the Provincial Governments may meet together, and as a matter of fact we heard in evidence that the western provinces do meet once a year, through their boards, to discuss these matters; I do not know, but it may be that they sit down and say, "Well, for every licence you issue to one of ours we want one of yours," and so on, and they may have some limitations. I certainly know of no statutory authority limiting it, but it may be the way it works out practically.

COMMISSIONER INNIS: You mentioned double licences and the cost involved in that, and I think there was some evidence to show that the rates between Manitoba and Saskatchewan were higher than they were within other provinces -- I think Mr. Sinclair said something to that effect -- and it seems to me the problem becomes of some concern, in that it does mean that you are tending to split up the Dominion as far as trade is concerned into different sections at the provincial boundaries, and so far as the whole economy is concerned it does have a sort

of divisive effect which would seem to be rather unfortunate.

MR. HUME: That may very well be, sir, that may very well be. Certainly each province regards itself as a completely autonomous entity for the purpose of regulating the vehicles that move over its highways. Now, there is nothing, as I understand it, to prevent the province of Quebec saying to every American tourist who comes into the province, "You must buy one of our licences and put your plate up." They do not do that, of course, because it is not practical. But when an Ontario operator wants to run between Ottawa and Montreal he must go to the Quebec Board and say, "I wish rights to run over your highways in your province," and he has to pay the licence.

COMMISSIONER INNIS: And conversely is it true?

MR. HUME: Yes, conversely, the Quebec operator who wishes to run from Montreal to Toronto must apply for a licence to the Ontario municipal board and prove his public convenience and necessity and establish the need for the service, and then if he succeeds he is granted a licence, and he then puts up Ontario plates and he has double plates on his truck. There are certain exceptions that the governments of the provinces have made, and one is the movement of household goods. Apparently a Quebec household good van may travel anywhere without the necessity of putting up plates in the province to which it may run. So they have made certain exceptions, these provinces.

THE CHAIRMAN: Has any suggestion been made, this being interprovincial traffic, that the Federal Parliament should do something about it?

MR. HUME: I am coming to that, if I may, Mr.

Chairman. I am just now at the moment discussing the relative size of this traffic in relation to the whole industry in Canada.

I should like to conclude it by pointing out that when one considers the total amount of freight carried by truck, as estimated by the Railway Association in its brief, and the amount of freight carried in the thousands and thousands of privately-owned trucks, one can appreciate that this volume of the for-hire international and inter-provincial traffic is really very small. Yet we have had suggestions that there be set up some elaborate system of regulations governing this international and inter-provincial traffic, that it be set up in Ottawa under Federal control for the purpose of regulating what, as I say, at the moment amounts to four or five hundred trucks. The private trucks, of course, carry on. Nobody has seriously suggested that you are going to regulate them, except that the Railway Association threw out some suggestion that they might have to be regulated but --

THE CHAIRMAN: Do you mean to say the private trucks carry on interprovincial traffic?

MR. HUME: Yes, Mr. Chairman.

THE CHAIRMAN: Do they likewise have to obtain a double licence?

MR. HUME: Yes, Mr. Chairman: but, being a private truck, they pay very much lower fees; the cost to them is considerably less.

As I say, to repeat again, Mr. Fairweather stated at page 20184 that he could not see where restrictive legislation was any solution to the problem. Viewed in that light I submit that the Saskatchewan proposed amendment that I have read, to regulate this international

and interprovincial traffic, is really not worthy of too serious consideration, because of the difficulties involved.

Now I should like to discuss those difficulties. I have mentioned first of all the size --

THE CHAIRMAN: The what?

MR. HUME: I have mentioned the size, or attempted to argue from what meagre information we have, the size of the industry.

COMMISSIONER INNIS: Those figures do not include the private trucks?

MR. HUME: No, Dr. Innis. They only include the for-hire, the commercial public vehicles.

COMMISSIONER INNIS: Have you any idea of the number?

MR. HUME: I would have no idea, no. I submit that it must be accepted as a necessary prerequisite to enforceable regulations that those regulations must be acceptable and approved by the industry that is being sought to be regulated, and that no regulations which do not have the support and approval of the industry can be very effective. The trucking industry in Canada is on record before this Royal Commission, through the brief of the Canadian Automotive Transport Association, that they are unalterably opposed to the regulation by the Canadian Government of international and interprovincial traffic. It is perhaps significant to recall the evidence of --

THE CHAIRMAN: Would you repeat that? They are unalterably opposed?

MR. HUME: Opposed to the regulation of international and interprovincial traffic by the Federal Government. The trucking industry, through the Association

that I represent, are on record as being opposed to that kind of regulation.

THE CHAIRMAN: Then they do not want any regulation at all, apparently?

MR. HUME: That is correct.

THE CHAIRMAN: Because the provinces cannot regulate them in that respect.

MR. HUME: They cannot regulate them in that respect, but the Province of Ontario can regulate a truck to the border of the province, and once the truck passes that very fine line the Province of Quebec comes in and regulates it in matters that need to be regulated according to the wishes of the people of those particular provinces, and to that extent the industry says, "We are completely regulated right across the border, because while we are in Ontario we are under their regulations, we have to conform with their width, their safety requirements, their heights, their hours of work, and all the rest of it."

THE CHAIRMAN: For instance, while you are in Ontario there is no tariff stated, but as soon as you go into Quebec there is a tariff.

MR. HUME: That is correct, yes.

THE CHAIRMAN: And I think we were told, were we not, in the evidence, that trucks leaving Quebec and going into Ontario are compelled by the law of Quebec to charge the same tariffs in Ontario as they charge in Quebec. Is that not the case?

MR. HUME: That is correct, yes, that is the evidence.

THE CHAIRMAN: Well, that seems to me as though there was an attempt to regulate interprovincial --

MR. HUME: I suppose it works out that way, Mr.

Chairman. I submit that it might be very effective, because once your Quebec truck got into Ontario --

THE CHAIRMAN: I am not asking whether it is effective or not; I am asking whether it is legal, whether it is proper.

MR. HUME: It may not be proper, but it is being done.

THE CHAIRMAN: Your people object to any federal regulation?

MR. HUME: That is correct, yes.

THE CHAIRMAN: Even of that sort?

MR. HUME: Yes, Mr. Chairman.

It is perhaps significant to recall the evidence of Dr. D. P. Locklin, the eminent professor from the University of Illinois, who gave evidence in Volume 63 of the transcript -- I have not the page number where he made the statement -- that before inter-state regulation in the United States was introduced there was a very strong feeling in the trucking industry that they desired that type of regulation. I submit, Mr. Chairman, that that feeling is entirely absent in Canada.

Now, Mr. Chairman, I submit that in the first place the number of vehicles involved is small, and I suggest therefore that the amount of traffic moved relatively is small; secondly, that the industry does not want regulation by the Federal Government, and that it would be impossible to enforce. Who is to say, for example, whether a particular movement was intra-provincial or interprovincial where goods were handled by more than one carrier or where they were transshipped at the border. Suppose a shipment leaves the city of Montreal destined for Toronto and is carried by one carrier to the border between Ontario and Quebec and is there transferred and

placed upon the truck in the province of Ontario, and then proceeds on its way in an Ontario truck to Toronto. That is known to exist at the present time, going from Oshawa to Montreal, in the shipment of new automobiles where the carrier goes to the border and stops and the automobiles are unloaded and put on a Quebec truck. In so doing the Ontario carrier avoids the necessity of buying a Quebec licence plate. There is nothing illegal in it; it is done today. That is the way the Ontario operator, as I say, eliminates the expense of buying Quebec licence plates, and the Quebec Government does not object to that. Suppose that goods originate in the Province of Alberta, and they proceed by one carrier part way toward a border and then are transshipped into another carrier, who then takes them across the border say into Saskatchewan or British Columbia; is the first carrier engaged in a movement of interprovincial traffic? Well, he is; he had goods that were destined outside the province, but nevertheless his carriage was inside the province. There are a great many problems that would have to be solved, and bear in mind that you have literally thousands of these operators, and they would be very difficult to regulate and control.

THE CHAIRMAN: There is no neutral territory between the provinces. In the case you put a moment ago, where they transfer from the truck of one province into another, both trucks are side by side, I suppose?

MR. HUME: I suppose, yes, Mr. Chairman.

THE CHAIRMAN: One of them is, to use the word, a foreigner; he comes from Quebec, but he is still in Ontario.

MR. HUME: Well, you see, I only refer to it --

THE CHAIRMAN: Is he allowed to go that far without obtaining an Ontario licence?

MR. HUME: I do not know that he does. I do not know that they do meet side by side, because I only refer to it --

THE CHAIRMAN: How do they transfer their load?

MR. HUME: The cars can be driven; the automobiles that are being carried can be driven.

THE CHAIRMAN: That is just automobiles?

MR. HUME: I just mentioned it in relation to the movement of motor vehicles on these carriers.

THE CHAIRMAN: I thought you were giving that as an instance. but it is confined to that particular sort of traffic, is it?

MR. HUME: So far as I know, and I think that is true. I am only citing that as an illustration that actually takes place today, but it is only in that one particular movement of goods; but it could move. To explore your question and have me attempt to answer it, let me take the case of package goods. The two vehicles meet side by side. One would be a foreigner, because of this line that is indivisible, at least hard to define, and is neutral territory, but that apparently could take place. And undoubtedly if these regulations were put in, to which the industry was not willing to submit in out of the way places --

THE CHAIRMAN: I am talking of the regulations now in force, whereby the vehicle which comes out of another province must obtain a licence in the province it is invading before it can circulate there.

MR. HUME: There are all kinds of arrangements made. For example, Mr. Chairman, the Ontario Government allows New York trailers ten miles inside the border without the necessity --

THE CHAIRMAN: That is an answer in part.

MR. HUME: And I do not know how far that goes between provinces. I understand there is reasonable reciprocity in working out these things, but there certainly is an opportunity in that sort of thing to evade any regulations in the miles and miles of border, with the thousands of operators. I submit that it would be a type of regulation that would be almost impossible to enforce if you did not have the sympathy and desire of the industry to regulate it.

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I should like to say a word about the legal aspect.

THE CHAIRMAN: In any case, so far as you know, your association is satisfied with the present way of doing interprovincial and international business?

MR. HUME: Yes, Mr. Chairman, completely satisfied.

I should like to say just a word about the legal aspect of the matter. The legal or constitutional law aspect of this problem, so far as I have been able ascertain, has never been determined. The matter has been argued out at some considerable length on previous occasions, but no satisfactory conclusions have ever been reached. There have been various suggestions by counsel on behalf of the railways before this Royal Commission that, of course the Dominion Parliament has power to regulate international and interprovincial truck transportation. The most recent appears in volume 93, at page 17707, and there are many others.

The provinces, except Saskatchewan, have been silent on the point so far as this Royal Commission is concerned. But they have not always been silent. I refer to the proceedings before the Senate Committee on railways in 1937 in connection with what was known as bill "B" This bill was the forerunner of the Transport Act, and was introduced in the Senate and referred to the Senate Committee for study. It contained, among other things, the machinery to regulate international and interprovincial highway transportation. The bill stirred up a storm. The Province of Quebec filed a brief before that Committee, appeared by counsel and stated that in their view such a provision in the Act was ultra vires of the Dominion Government and would be attacked by the Province in the courts, if it was passed. The Province of Alberta, the Province of Manitoba
and

the Province of Saskatchewan under another government also appeared by counsel and took a similar position. The province of Nova Scotia took the same position and references were made to that position in volume 72 of the transcript at page 14731. It was suggested on behalf of the Dominion Government in 1937 that the Dominion Government had authority to regulate international and interprovincial truck transportation but no authority was produced; and in view of the violent opposition of the provinces, the bill was defeated in committee.

A similar bill, except that the provisions governing highway transportation were omitted, was introduced into the House of Commons in 1938 and became the Transport Act. A federal bill to amend the Act, containing certain references to international and interprovincial transport, was introduced in 1940 but was withdrawn by the minister before vote.

It is submitted that until such time as a competent judicial tribunal decided the question as to whether such legislation would be *intra vires* or *ultra vires* of the Dominion of Canada, any recommendation or suggestion by interested parties that the Dominion Government should regulate this interprovincial movement is premature.

I have not prepared, and I did not think that it would be worth the time taken to do so, any sort of legal argument, except that I refer to these proceedings on Bill "B", a copy of which I understand is now on file, together with the briefs presented by the various provinces which can be read and the various arguments that were presented as to why this was *ultra vires*.

I merely state at this point that no court has decided the point; and apparently no person or interested party has taken the necessary action to have it decided.

Whether they are afraid of the outcome or not I do not know; but the point, I submit, is not decided, when the argument is put forward "Of course the dominion government have jurisdiction", the provinces come back and say "Of course they have not." Until the matter is decided I submit that any recommendation to regulate it is premature, and any amendment such as has been proposed by the province of Saskatchewan is completely premature; because if Quebec takes the same position in 1950 as it took in 1937, the Saskatchewan amendment will be immediately attacked; because it was pointed out at that time that if you pass this, it is ultra vires having regard to their rights.

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Ontario took the same position, that this matter would be attacked as being ultra vires.

In making this submission, I submit, first, that the volume of this traffic is small; second, the industry is violently opposed, and third, and in conclusion on this subject, I submit that the Commission should make no recommendation on this subject until the question as to who has jurisdiction is settled.

My last word on this matter has just come to my attention, Mr.Chairman. It is a statement by Honourable Mr.Chevrier, which is to be found in Hansard of March 22, 1950. When the House was sitting in Committee of Supply, and a discussion came up about highway transportation, Mr. Chevrier had this to say.

THE CHAIRMAN: When was that?

MR. HUME: March 22, 1950, reported in Hansard. His statement was as follows :

"MR. CHEVRIER: For instance, the question of highway transport is one which is under the jurisdiction of the provinces; and the question of international and interprovincial highways is one for agreement between the provinces.....I do not know whether the provinces would be willing to reach agreement on the matter."

Then he goes on to deal with the matter more particularly. He goes on to explain that this Commission is sitting and he is talking generally of the Railway problems. I read that only to indicate that the Minister is quoted in Hansard as stating that it is his opinion certainly that international and interprovincial truck transportation is a matter for agreement between the provinces, indicating apparently that he does not believe that the federal government has jurisdiction.

I should like now to turn very briefly to the matter of agreed charges. It is no wonder, I submit, that the trucking industry is violently opposed to agreed charges. I think it would be very surprising if the industry were not.

THE CHAIRMAN: That is, agreed charges of the railways?

MR. HUME: Yes. I would say it would be very surprising if they were not opposed to this device which contains a clause prohibiting a shipper from using their services. The highway industry can no doubt go and make contracts, and does make contracts with shippers for the movement of goods. ^{But} I do not think there is any term in any of these contracts, because of the practical nature of things, to the effect that the shipper is forbidden to use the railways. The agreed charges contain such a provision forbidding the shipper ^{or saying} that he will not use highway transportation. Therefore I say it is not surprising that I am appearing in my capacity as representing them and opposing it.

THE CHAIRMAN: Does the agreement mention highway transport?

MR. HUME: Yes, Mr. Chairman. Every one of the agreed charges, which I understand are filed here and which I have looked at, all have a clause in them to the effect that the shipper agrees not to ship by highway transport over - and they have certain mileages, twenty miles, thirty or forty miles, depending where the shipper is located. It is part of the terms of the contract forbidding the use of truck transport. It even forbids them to use their own vehicles. It goes that far. They cannot use their own truck transport beyond certain mileage limits.

There are not very many truck operators in Canada who are not aware of the fact or who have not been made aware of the fact that when agreed charge No. 4 went into effect in the Province of Alberta in 1939, it threw out of employment some 125 tank truck operators. A substantial number of these operators were put out of business indefinitely and others were forced to take the tanks off their trucks and to go into other types of truck transportation. The truckers opposed this principle when it was introduced in 1937. It is interesting, I think to recall to this Commission that this principle has been opposed not only by the truckers who are most vitally concerned, but in the hearings of this Royal Commission at Vancouver by the Winnipeg Chamber of Commerce, at page 113; by the Anglo-Canadian Oil Company at page 505; by the Canadian Manufacturers Association at pages 5720 and 5780; by the province of Manitoba at page 8751 to 8761; by the province of Alberta at page 10575 and 10747; and by the Canada Steamship Lines who filed a whole brief about it, in volume 69.

The fear of the Canadian Automotive Transport

Association on behalf of their members, is not so much as what has happened in the past but what may happen in the future. Here is a weapon which truly reverts to the law of the jungle in competitive warfare. Here is a means of establishing rates with particular shippers which violate all established concepts of railway rate making as they have been built up in Canada. Here is a device which can, if used to ^a sufficient extent, completely destroy other forms of transport. The agreed charge, I submit on behalf of the Association, caters to big business for the simple reason that the railways cannot afford to devote the time necessary to developing a multitude of individual contracts with small shippers. To provide special freight rates for big business

is a retrograde step. Railways now propose, by the introduction of this principle which they are advocating, to throw overboard the established system of such control in Canada which was considered over the years to be necessary in order to hold or to regain a very small fraction of their revenues.

This is a weapon, Mr. Chairman, that I submit can be used by the large transport industries of this country to destroy the smaller ones; and it is done in such a way that the trucker is not even notified of the fate that is going to happen to him. He receives no notice from the Board of Transport Commissioners or from anywhere else that this agreed charge is being considered. It is a matter with regard to which the water carriers receive notice, because they are regulated by the Board; and certain notices go out to various Boards of Trade and so on.

The trucking industry certainly receives no notice of the fact that an agreed charge is being considered, and that they will be subsequently put out of business by a contract that says that shipper A cannot use their services in connection with the movement of his goods. It is against a background of that kind that there have been suggestions before this Royal Commission that the trucking industry join other means of transportation in federal regulation.

There is a certain interesting change in attitude toward these agreed charges on behalf of the railways which is worthy of note. The record of the hearings before the Senate Committee to which I referred earlier and in the House of Commons when the Transport Act was being considered, which preceded the introduction of these agreed charges, indicated that the reason for agreed charges was that it was unfair, they said, for the shipper to use trucks in the summer time when they were running, and in the winter time when the trucks did not run to turn back to the railways. They said it was eminently unfair to keep the railroads running all year round if the shipper used them only in bad weather and not in good. It was argued that because the trucker did not run in the winter time they wanted a device which would hold the traffic all year round. We do not hear that argument today. The C.P.R. submission at page 76 points out that "the highways are to a large extent kept open during the entire year."

Therefore that line of reasoning is not applied now because highway operators run all year round. There are certain submissions that were made by the province of Manitoba in connection with agreed charges. As I say, it is not my intention to spend an undue length of time

on this matter because you will be hearing from others on the point. I should only like to say that in so far as their submissions are concerned the association adopts their view.

THE CHAIRMAN: I think most of the objections we have heard against agreed charges on the part of the railways have come from other shippers and those who speak for other shippers.

MR. HUME: That is correct.

THE CHAIRMAN: Your case is different. You are another transportation medium and you are objecting to the railways giving agreed charges to their shippers which exclude you.

MR. HUME: That is right. Therefore we are very pleased to see that other shippers are objecting.

THE CHAIRMAN: The viewpoint is very different.

MR. HUME: Oh, I agree. I only mention that there are reasons against it. I am giving our reasons because we think we may be destroyed or seriously interfered with.

THE CHAIRMAN: You seem to think that no shipper should be allowed to make an agreement with a railway whereby he will bind himself so as to exclude the use of your medium?

MR. HUME: That is right. As I say in concluding my remarks, the province of Manitoba take the view that we adopt. They say they have protection. The contention of the province of Manitoba was that they can do the same thing by a competitive rate. They can put the rate down overnight. They can hold the traffic by a competitive rate, and why go beyond that point?

THE CHAIRMAN: The truckers say that?

MR. HUME: The province of Manitoba said that

in their submission --

THE CHAIRMAN: That it could be done how?

MR. HUME: That they can use competitive rates to hold this traffic rather than agreed charges.

THE CHAIRMAN: Then you mean to say they are willing to have the railways use competitive rates?

MR. HUME: Yes, and we say that the railways are free to use competitive rates. The trucking industry is not objecting to the use of competitive rates by the railways.

THE CHAIRMAN: You object to this one thing, and that is the exclusion in these contracts of the right of the shipper to use trucks.

MR. HUME: Yes, Mr. Chairman.

THE CHAIRMAN: That is the one thing to which you object?

MR. HUME: That is the only thing we are objecting to in the matter of agreed charges. The rest is none of our business.

THE CHAIRMAN: You think the shipper should not be free to that extent to bind himself to exclude trucks?

MR. HUME: Yes, I think he should not be free to that extent.

THE CHAIRMAN: Do you not think you are interfering with freedom of contract there?

MR. HUME: You may be, but on the other hand the shipper is a business man, and if the railway will offer such a low rate he will contract himself out of the use of trucks. We feel it is a bad principle and it is one to which we object. The shipper can get his same rate, the same bargain, by competitive rates without having to have the railways insist upon that clause because the railways probably are the ones who insist

upon that clause. The railways draw up the contract and present it to the shipper with a clause under which the shipper agrees not to ship by truck, and in order to secure the rate he signs the contract. It is not the shipper who comes along and says, "I am willing to agree not to ship by trucks if you give me an agreed charge." It is a contract worked out between them --

THE CHAIRMAN: Yes, otherwise he would not sign the contract.

MR. HUME: He is induced to sign it by the fact of a very low rate. These agreed charges are mostly a very low rate.

COMMISSIONER INNIS: What are the duties of the railways as common carriers? Is that interfered with at all by this regulation?

MR. HUME: No, I do not think there is any interference with their duties, if you accept the principle. Mind you, representing the trucking industry I do not want to get out of my field into rates and rate making. If you accept it that the principle of rate making in Canada is the principle that has developed over the last six years then I am impressed somewhat when I listen to the submission of the province of Manitoba, probably because of the position I have here in the interests of my clients, when they say that the railways can be just as well protected and can compete on a fair basis with their competitors by the use of competitive rates rather than to enforce a contract wherein they say, "We will give you a much cheaper rate, a very low rate, provided you will agree not to ship by truck." As I recall it, the evidence of Mr. Jefferson was that in eastern Canada on oil and salt it was not our industry at all they were preventing the use of; it was the shipper

using his own truck so it works both ways. Mr. Chairman, that concludes all I want to say in argument on that question.

I now want to refer to another subject matter dealt with in the evidence submitted by the Association, and that is as to the matter raised by the members of the Canadian Automotive Transportation Association as to railway operation of highway transport. The Association is against the entry by the railroads in Canada into competitive trucking operations. In support of their position the Association quoted the Interstate Commerce Commission, of the United States at page 17 of their submission which is found at page 9638 of Volume 50 of the transcript, to the extent that the Interstate Commerce Commission have laid it down as a principle as follows:

"Having in mind the obvious public benefit to be derived from independent development of rail and motor transportation, we have looked with some concern at the apparent tendency of many railroads to acquire a substantial interest or permanent position in the motor carrier industry."

THE CHAIRMAN: Who says this?

MR. HUME: The Interstate Commerce Commission of the United States. That is found at page 9638 of Volume 50. That Commission has indicated that in their opinion they look with some concern upon this development, and they have stated that they condition all grants of certificates under their Act in such a manner as to restrict the authorized motor operation to a service which is either auxiliary to or supplementary of rail service, and that they will not permit the entry by railroads into the trucking industry and the operation of lines which run parallel to and compete with their

rail service. I have not any definite information but I understand from my inquiries that that ruling or that position is under appeal to a higher tribunal in the United States. I do not know whether any ruling has been handed down as to whether that is to be the situation. If there has been a ruling no doubt railway counsel will mention it in argument. I only wish to state the position of the Association in connection with this matter, and I do not wish to labour the point.

The Association accepts that view as being in the best interests of Canada. There are others who have given evidence for one reason or another in opposition to rail entry. In volume 3 at page 382 the Manitoba Co-operative Wholesalers Limited opposed rail entry in western Canada because they said at that page that they were afraid it might eliminate truck competition and that therefore it was not, in their opinion, in the best interests of Canada.

At page 487 Anglo-Canadian Oils Limited stated to the Commission that they were opposed to rail entry into the highway transportation field because they said that in their opinion it might smother competition.

In volume 9 of the transcript at page 1466 the Edmonton and Calgary Chambers of Commerce in a joint submission recommended prohibition of rail entry into the trucking field on the same basis.

At page 1500 of the transcript the Alberta Co-operative Union stated to the Commission that they were against rail entry if the truck lines being purchased by the railways were competitive with their own rail service.

The British Columbia Feed Manufacturers Association at pages 3102 and 3103 of volume 17 of the

transcript stated that they were also opposed to rail entry as it might tend to defeat competition.

At page 5996 of Volume 31 of the transcript the Canadian Industrial Traffic League was against rail entry as they were afraid that the railways might obtain a monopoly in the transportation field by highway.

THE CHAIRMAN: Then you think the railways should be restrained by legislation?

MR. HUME: Yes, that is the view of the Association which I represent, that by legislation the railways should be prohibited from extending their efforts into highway transportation.

THE CHAIRMAN: Do you know of any such legislation anywhere else?

MR. HUME: No, I do not know of any such legislation except, as I have pointed out, the rulings in the United States.

I want to make a few remarks on the subject of co-ordination. No official definition has been given to the term "co-ordination" as applied to transportation before this Commission, and it may or may not have a variety of meanings in the minds of the people who used it. These meanings may range from voluntary consolidation to compulsory consolidation, as I understand has happened in some places throughout the world. I suggest the word seems to be of a very elusive nature and may permit many interpretations.

I think it will be agreed by most people that co-ordination in the transportation field, if it is to be effective, must be purely voluntary, and there are examples of voluntary co-ordination in Canada in the transportation field. I refer to one example of co-ordination that I consider very healthy and a good

thing, that in the passenger traffic field between railways and independently-owned bus lines. An examination of the Canadian National and Canadian Pacific railway time tables will show published co-ordinated schedules between railways and independently-owned bus lines.

There seems to be, however, very little of this co-ordination between railways and the highway transport industry for the movement of freight with the possible exception of co-ordinated services between the railways and their own subsidiaries or some individual contractors who are engaged in pick-up and delivery service or under exclusive contract to the railways. I submit that this is a field which could be explored by both the railways and the highway transportation industries to the mutual benefit of each.

The reason why it has not been explored may be purely historical. I suggest that the railways having had a virtual monopoly up until the last twenty-five, thirty or maybe forty years ago, probably did not consider this new invention of the internal combustion engine and the first awkward truck very much of a threat to them. Possibly that thinking has conditioned railway thinking over the years, and it may be one of the reasons why the railways have not taken the initiative.

On the other hand, taking the truck operators, I have pointed out that most of them carry their offices under their hats, and without any great background of business experience they buy a truck and go into the business. They secure a licence, and they are probably suspicious of the railroads, and they have not been very willing to take the initiative. I feel, and I make this submission, that co-ordination between the

railway industry and the trucking industry in Canada is a matter that can be explored, to the mutual benefit of each. It could take the form of published through rates and joint tariffs in the same manner as exists today between the railways and the water carriers. To give one example, the railways could turn over c.o.d. shipments to a trucker, shipments that are destined to a point off their rail line, without the necessity of the trucker paying at the station for the c.o.d. shipment. In other words, a mutual arrangement could be worked out between them.

Or it could take the form, as it has done between Boston and New York, and in certain of the western states, of an arrangement where the railways and the highway carriers have co-ordinated for the movement of trailers on flat cars. I have here two pages of a magazine, torn out of a magazine that was identified by Mr. Jefferson as a reputable American magazine dealing with traffic problems. It is called Traffic World and is dated February 11, 1950. I am not attempting to use it to prove anything, but there is an article in it which I have in front of me by Mr. Richard C. Colton, who is traffic manager of RCA Victor, and is not a transport man. He is a shipper. He has written an article in which he deplores somewhat the fact that railways in the United States have not done more of this. He points out there the satisfactory arrangement that exists for moving these trailers on flat cars in the United States and he mentions all the points that are referred to. Would you like me to stop at that point, Mr. Chairman?

THE CHAIRMAN: Yes. Has any arrangement been made about time?

MR. COVERT: Yes, there is.

THE CHAIRMAN: Mr. Hume has more time?

MR. COVERT: Yes, he has.

MR. HUME: I will be about twenty minutes.

---The Commission adjourned at 1.00 p.m. to resume
at 2.45 p.m.

Ottawa, Ontario,

Tuesday, May 2, 1950

AFTERNOON SESSION

THE CHAIRMAN: All right, Mr. Hume.

MR. HUME: At the adjournment this morning, Mr. Chairman, I had just finished discussing one of the phases of possible co-ordination that could be undertaken by both the railways and the trucking industry, possibly with the result of mutual benefit to each, and I now just want to say a word. This co-ordination I have been discussing cannot take the form of abandonment by railways with the Commission under the existing legislation as I have heard it is enforced, of unprofitable branch lines.

THE CHAIRMAN: Of what?

MR. HUME: Of unprofitable branch lines, where perhaps co-ordination can be worked out between the railways and the existing highway carrier to where the latter would take over movement of freight in certain areas and where the railways were maintaining branch lines, if there are any such, which were very unprofitable and on which the freight movement would not justify their continuing existence.

Volume 93 of the transcript at page 17733, which was heard on March 10, discloses that Mr. W. A. Newman for the Canadian Pacific Railway stated, in answer to a question I think of Mr. MacPherson, that abandonment of passenger service on a line known as the Lake Erie & Northern (Electric) Railway was under consideration, but he stated that he doubted whether any conclusions had been arrived at by the railway in connection with that matter, and that he did not think any arrangement had been made. He was apparently unaware

that the Board of Transport Commissioners had received such an application to abandon passenger traffic two weeks before he gave his evidence, and on March 9 had issued an official notice of sittings at Galt to consider the application.

THE CHAIRMAN: Sittings at Galt?

MR. HUME: At Galt. I understand those sittings have been held, the evidence has been heard and judgment has been reserved.

THE CHAIRMAN: Which railway is this?

MR. HUME: The Canadian Pacific Railway. It was proposed in that case that the passenger service, which had been operated by the Lake Erie & Northern (Electric) Railway, which is a subsidiary, I understand, of the Canadian Pacific Railway, be taken over by an independent bus operator known as the Canada Coach Lines.

THE CHAIRMAN: What about the freight service?

MR. HUME: I do not think there was any freight service involved in this particular application. This was purely the abandonment of a passenger electric line.

I then submit that if it is profitable or if it is considered in the interest of the railway to abandon unprofitable passenger lines and make an arrangement with an independent bus operator, it may be in Canada somewhere just as feasible to make an arrangement, or at least to discuss the co-ordination, between independent highway freight operators, and that the same rules would apply. I cannot see any difference, and I submit that the principle involved in the unprofitable passenger line should also or could also apply to unprofitable freight services. As I understand it, when these applications come forward for the abandonment of unprofitable freight lines, they go through the machinery

prescribed, but there is no attempt made or has been no attempt made to work out any kind of co-ordinated scheme with established highway operators in the area so that a complete plan could be submitted to the regulatory authorities in a consideration of abandonment.

COMMISSIONER INNIS: Would you like to see the C.N.-C.P. Act extended to cover trucks?

MR. HUME: Well, I do not know enough about the C.N.-C.P. Act, Dr. Innis, to answer your question, sir. I do not know; I have not made any study of it. I just do not know enough about it.

Mr. Newman at page 17696 stated:

"Canadian Pacific is more than fifty per cent branch lines and a great many of our branch lines do not pay their way. . . . We believe that the time will come in Canada, as it has in the United States, that it will be desirable in the best interests of Canadian transportation for us to replace some of our branch operations with highway operations and we feel that it is essential for us that it be recognized that, as a transportation company with an obligation to the municipalities and to the towns in different areas to provide transportation, we should maintain the right to do so. . . . All that we would do in most cases is to reduce the severe loss to a lesser loss and I am doubtful in all cases whether or not the kind of business we might have to do would be attractive to anyone on a contract basis."

I only read that in order to make this submission, that apparently there has been no suggestion that if that is so -- and that is a situation which the railways feel,

according to Mr. Newman's evidence, may come -- then I suggest and submit that there may be a field of co-ordination there between the independent established operators who are doing business in the area, I presume, at the moment, and the railways, rather than have the railways consider the matter purely from their own standpoint, "We have to abandon the line, we have to buy trucks to put on in their place," and so on --

THE CHAIRMAN: You said this morning that you would oppose the railways having the right to operate trucks.

MR. HUME: I state that yet. I am suggesting that in this kind of evidence Mr. Newman suggests that they put on their own trucks, not me.

THE CHAIRMAN: I understand that; but I say we must bear that in mind when we read Mr. Newman's evidence.

MR. HUME: That is right, Mr. Chairman, and I am suggesting that this is a situation wherein it may be possible to have coordination along the lines I have been discussing - a field where coordination might exist.

COMMISSIONER ANGUS: Do you consider that the established highway operator in the vicinity has a sort of vested interest in being given first chance at the traffic if the line is abandoned?

MR. HUME: He certainly has, Dr. Angus, a vested interest under the licensing system. For example, in most of the provinces, excluding Alberta, he makes his application, he gets his license, and he is allowed to run between particular points. He has a vested interest to the extent that some outsider cannot come in without going through the machinery of also buying the license, and he therefore establishes an investment in the area and makes his contacts and so on, so he has a vested interest certainly under the

1. The first part of the paper is devoted to a general discussion of the problem.

2. The second part is devoted to a detailed study of the case of a single particle.

3. The third part is devoted to a study of the case of a system of particles.

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system that is now in force in most of the provinces. But, along the lines as suggested by the Chairman, as to the railways putting on their own highway vehicles...

THE CHAIRMAN: We understand that you are opposed to that.

MR. HUME: Yes, Mr. Chairman.

THE CHAIRMAN: If anything at all ought to be done it ought to be done by cooperation between the railways and the truckers.

MR. HUME: Yes, Mr. Chairman. And in passing, I want to say just one more thing in argument in support of that view, if I may refer very briefly to a case known as the "Beauport Case". It is popularly known as that. It will be found in 1945 Supreme Court Reports at page 16.

THE CHAIRMAN: What is the case?

MR. HUME: It is called the Beauport Case; that is the short name for it. It has a much longer name. It is found in 1945 Supreme Court Reports at page 16. In that case, Mr. Chairman, the Supreme Court of Canada held that a bus company which is intra-provincial in scope and is owned by a federally controlled railway company is not subject to rate control by the province in which it operates, but in view of its railway ownership is subject insofar as rates are concerned to Federal control. To say the same thing in another way,....

THE CHAIRMAN: That does not necessarily mean, though, control by the Board of Transport Commissioners.

MR. HUME: Yes, Mr. Chairman. They said - well, not that particular Board. As a matter of fact, the case went on to point out that the authority of the Board of Transport Commissioners had never been extended to buses, and the thing is a void now. The Act has never been amended to give the Board of Transport Commissioners jurisdiction.

The case decides that the Federal Government control those rates, not the province, even though it may be an intra-provincial bus company. As I say, I only cite that as one more example as to why some of the provinces...

THE CHAIRMAN: Does that particular trucking concern control its own rates? It is not subject to the provincial rates, and there are rates in effect. What rates does it observe?

MR. HUME: It does not observe any. It observes the rates that are set by the company. The province has no jurisdiction.

THE CHAIRMAN: By the railway company?

MR. HUME: By the railway company who own it, in the last analysis.

COMMISSIONER ANGUS: Do you consider that the same problem would apply to trucks as to buses?

A. I think it would, yes, Dr. Angus.

THE CHAIRMAN: Is that Beauport Case a case of buses or trucks?

MR. HUME: It is a case of buses, but the principle enunciated by the Supreme Court makes no difference between the two. In effect it has been considered by some as indicating that even in the case of highway transport the for-hire truckers, if a railway company buys an intra-provincial trucking concern, its rates may be not subject to provincial control. There has been no decision on that point, but the Beauport Case, while it refers to buses, does establish a principle of constitutional law.

Mr. Chairman, I want now to refer just very briefly to the question of highway costs. It has long been a claim of the railways in Canada and in the United States that the trucking industry do not pay their fair share of highway costs, and are therefore subsidized and are therefore unfair

competition. This allegation has been denied by the trucking industry as often as it has been made, and various studies have been undertaken by governments and others to determine the facts.

In Canada this matter is purely provincial, and, because it is provincial, the Association which I represent took the position that this Commission would probably want to enter into a study of that particular point which was raised by the brief of the Railway Association of Canada. A letter was written to commission counsel on November 8, 1949, asking for a ruling as to whether or not the trucking industry was required to meet this claim and produce evidence in rebuttal. As a result a letter was written by Mr. Covert to me, dated November 10, 1949, in which it was stated that the Commission did not intend to express any opinion or make any finding as to whether or not motor vehicles are now paying their proper share of highway costs. This eliminated the necessity of the meeting of this claim by the Railway Association of Canada on behalf of its member railways, but the Commission reserved the right to recommend that motor vehicles should pay their proper share, and with this statement the trucking industry whole-heartedly agree. Therefore, I do not propose to enter into any detailed discussion or argument on this question of highway costs and their allocation, but I would like to point out that it is interesting to note that the Duff Commission, who apparently spent some time in the study of this matter in 1931, found that the users of the highways should pay two-thirds of the cost of construction and maintenance and that the other one-third should be paid by the general taxpayer on the basis that roads have a social necessity value and are therefore to be maintained in part out of the general taxpaying public. If we accept those

findings as fair and reasonable findings based upon an adequate study, what then is the situation in Canada? The answer is furnished perhaps by the appendix to the Railway Association of Canada's brief, where exhibit 14 of the appendix tells us that since 1930 the users, all users, of the highways through gasoline tax and motor vehicle licenses have paid 77.4% of the cost of construction, maintenance and administration expenses of highways.

(page 21360 follows)



And Exhibit 15 of the Appendix tells us that since 1919 the users of the highways have paid 72.5% of the cost of construction, maintenance, including amortized charges, highway debts and all of the other expense items that go towards general highway costs. And so, Mr. Chairman, it is pointed out in their own submission that the users are paying considerably more than the minimum found by the Duff Report.

No evidence was produced as to what percentage was paid by the trucking industry, because, as I have already stated, the ruling was advanced that this matter would not be reported upon. But I merely want to find out at least that much of the matter which is contained in the evidence presented before the Royal Commission.

In 1947 in Ontario, according to my information from the Department of Highways, the public commercial vehicles, that is, those for-hire vehicles, comprising less than 1% of the total user vehicles in Ontario, paid 14% of all the gasoline tax and license fee revenues received by the Department of Highways. Less than 1% of the vehicles P.C.V. vehicles paid more than 14% of the gasoline tax.

Mr. Chairman, a quick word as to statistics. The development of statistical data for highway carriers is at the moment nothing more than a hope and a desire. If we consider that the individuals concerned in the highway transport industry are small business men who conduct their own business in their own way, it is not difficult to realize the reason for the absence of any refined data. One of the

difficulties that faced us in presenting evidence or submissions to this Commission, was the lack of some statistical data, and I am sure the same difficulty must have faced those of the Commission staff who were charged with certain responsibilities, and certainly those in the provinces who were interested in it too. The average truck operator in highly motorized Ontario, owns less than 2.6 vehicles and to pass a law requiring these hundreds and perhaps thousands in Canada in the business, hundreds or thousands even in Ontario, to pass some sort of law requiring them to fill in various forms, is not the answer. The Canadian Automotive Transportation Association realizes the nature of this problem and is making a serious attempt to develop information and to educate the industry. Some information as to what has been done was filed as Exhibit 125 in these hearings.

In conclusion, may I submit that when it is remembered that the for-hire trucking industry is made up of thousands of small operators across Canada, and when it is remembered that the industry is less than fifty years old, it is not surprising to find that there is no reliable statistical information, and it must be realized that it is equally impossible to determine from actual operators themselves the so-called economic limits of the truck haul. The Railway Association in their Brief attempted to show that the economic limit of the haul is something less than 100 miles, and they defined their terms by relating this limit to the cost of moving goods by rail. I submit that it is impossible to determine what

is the economic limit of the truck haul. It is perhaps possible to determine an economic limit in relation to another figure, but the situation as it exists today under the "umbrella" as Mr. Fairweather calls it, being a situation that is in existence, if price were the only consideration, there is or certainly would be some explanation as to the use of the truck as a vehicle for moving freight; and it may be possible to relate or co-relate this economic limit of the haul.

When you have considerations of service, when you have considerations of speed, when you have other considerations of flexibility and so on, ~~where~~ where the shipper perhaps is not too concerned about the price, and is willing to pay any price, as the shipper by air may be to get his goods moving quickly from one point to another in a matter of two hours that ordinarily would take a day, that is, by air express; when price does not enter into it, there is no economic limit surely. It is just what the shipper or what the public will pay.

Evidence was given on truck hauls over two thousand miles, and I am advised that hauls of over one thousand miles are very common in the United States. I predict and submit that when the Trans-Canada Highway is completed, hauls of over one thousand miles will be common in Canada. So long as there is a road and a shipper who wishes to ship by truck, the freight will move over the highway. If the trucker charges a rate for his thousand mile haul that is greater than the shipper can get from another form of transportation, the shipper will not use the truck

It is a very common mistake to suppose that the only way to get the best of a thing is to get the most of it.

But this is not true. There are many things which are better when they are less.

For example, a man who is too rich is often a man who is too poor.

And a man who is too strong is often a man who is too weak.

So it is with everything else. There is a right amount for every thing.

And the man who knows this is the man who is the best of his kind.

He is the man who is the most of himself, and the least of everything else.

And this is the secret of all wisdom and all power.

It is to know when to stop, and when to begin.

And this is the secret of all success and all happiness.

It is to know when to say "enough," and when to say "no more."

And this is the secret of all love and all friendship.

It is to know when to give, and when to take.

And this is the secret of all life and all joy.

It is to know when to live, and when to die.

unless there are extraordinary service advantages. The answer must be that in the United States there are a great many shippers who are paying the rate charged for these thousand mile hauls. Goods are moving today from Florida into Ontario and Quebec, taking up citrus fruits and taking back vegetables, turnips, and so on, and it is a fact that in Ontario there are at least 25 or 30 trucks entering Ontario every day, all the way from Florida and go back loaded with turnips and other similar produce. Goods are moving from New York State right across the continent to the Pacific coast in the United States, and that is apparently an expanding condition. The economic limit of these hauls surely must be controlled by the fact that the shipper must be willing to pay whatever the tariff is -- and I have no idea what it is for these long hauls.

It is equally difficult to find any reliable data on the costs of the operator's operation, and even if a cost picture could be developed for one operator it would not be accurate for another operator or another class of operator. These truck operators are in a highly competitive business. They compete with each other; they compete with the shipper who uses his own truck; and they compete with other forms of transportation. These men are not interested apparently in developing statistical information as to their cost or the economic limit of their haul, except as it is necessary to conduct their own business, and having developed figures for their own use they are not enthusiastic about sharing them with other competitors.

The service offered by the trucking industry is in many cases unique, and it cannot be duplicated in many cases by other media of transportation. Whether the truck is used by the shipper depends upon so many factors of service, convenience and price, that it would be impossible for anyone to prepare regulations or attempt to set up a code to determine when the truck should or should not be used. The Railway Union in their Brief and submission state that they can see no justification for trucks carrying goods on the highway that parallels a railway line. It would be surprising if the Railway Union held any other view, but I submit that this is not a very realistic appreciation of the transportation situation today. It is the shipper who keeps the truck operator in business and who will continue to patronize this industry. Arbitrary restriction of the trucking industry will not return the freight to the railways but will increase private trucking. The greatest competitor facing both the railroads and the motor transport industry today is the shipper who sends goods by his own truck.

I submit in conclusion that a hasty examination of the history of truck transportation discloses a constant struggle for speed and flexibility. The barge gave way to the stage coach; the stage coach gave way to the railroad. The motor vehicle as a medium of transportation, both privately and for-hire, is a very important factor today and it will become increasingly so in the future. The use of the motor vehicle is perhaps another step forward

in the development of the transportation picture.

COMMISSIONER INNIS: In your last sentence you are talking about growth. Have you made any studies which would supply us with figures as to the possibility of growth? You seem to suggest in a vague sort of way that the trucking industry will grow. Now, is there any indication, for example, taking into consideration the rate of depreciation and deterioration of trucks, the rate of manufacture of trucks, the crowding of roads and all that sort of thing, as to how much more it can grow?

MR. HUME: No, Dr. Innis. I could not foresee what is going to happen in the future. There is perhaps only one barometer to which I can direct you in the matter (and it does not answer your question) but that is the record in the brief of the Association indicating the increase in truck registrations in Canada. Now, that must have some bearing on the problem, because, while it is true there are more and more farmers buying trucks for farm use, there also must be more people who buy trucks to earn a living from those trucks. Page 7 of the submission is the record of the growth from 1922 up to the present time. Whether that is going to continue, I have no idea.

COMMISSIONER INNIS: That would be difficult to advise, whether it would continue to increase at the rate it has increased in the last ten years.

MR. HUME: Yes, I am not competent to foretell it, but there are certain developments taking place. The Trans-Canada Highway is a development which I think will undoubtedly in my view increase trucking.

The Province of Ontario recently have raised the weight limit. That in itself is not too significant, but that permits a trucker who formerly could carry a payload of 10 ton, can now carry 12 legally, and he makes more money. And so many factors will come in the future that I would hate to make a guess, sir, as to whether the rate of growth will be the same, whether it will come to a standstill or what it will do.

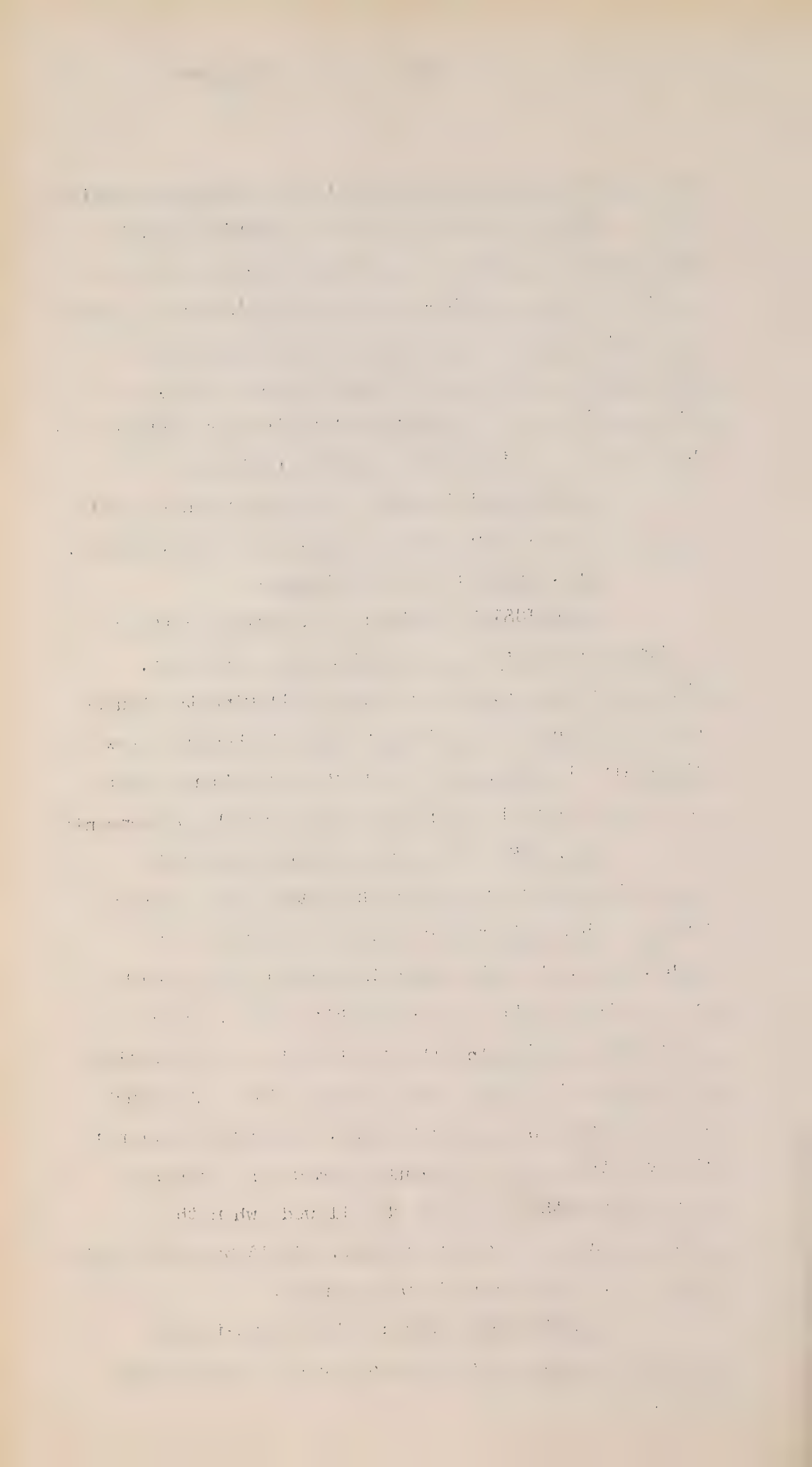
COMMISSIONER INNIS: One other minor point. I hope I am not encroaching on your time, Mr. Covert.

MR. COVERT: It is all right.

COMMISSIONER INNIS: You mentioned the use of trucks under the Feed Grains Assistance Act. Why did the Government Act in not allowing the trucks to take advantage of the Act? Was it because it was difficult to administer? Have we any evidence as to the reasons for the step being taken by the Government?

MR. HUME: No other evidence except the suggestion which is made by the witness Mr. Goodman who gave this evidence in Volume 50 about it, I think, and he had the Order-in-Council, and I don't know if it was filed as an Exhibit or not. There was nothing indicating it except that it said in there that claims for subsidy for goods moving by truck would be made on a separate form. On investigation to discover the reason, it would be made on a separate form so that they could be disallowed when the applications came in for subsidy. So it was arbitrarily taken off. Previously it was granted.

COMMISSIONER INNIS: That is what I was wondering, if there was reason for this action being taken.



MR. HUME: The only reason I can state, as I have stated already, I am instructed that the purpose was to divert this traffic to the railways.

THE CHAIRMAN: All right, Mr. Shepard,

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ARGUMENT BY MR. SHEPARD

MR. SHEPARD: May it please the Commission. I would like, just for the record, Mr. Chairman and members of the Commission, at the outset, to make mention of one thing and that is that during these proceedings in the preparation of the argument on behalf of Manitoba, I have had the benefit of consultation with Mr. Wilson E. McLean, K.C., of Toronto, who has been retained as advisory counsel to the Manitoba Government on this matter because of his previous association on behalf of the Manitoba Government in the previous rate cases.

At the outset of this argument on behalf of the Province of Manitoba it is perhaps well to recall that the submissions made by Manitoba were the result of study by a Committee, under the chairmanship of Mr. R. E. Moffat, Economic Advisor to the Manitoba Government. The personnel of the Committee is set out at p. 8362 of Volume 43 of the Transcript and included both accountants and economists. At the same page of the Transcript it is pointed out that the Manitoba Freight Rates Committee reported from time to time to a Committee of the Manitoba Cabinet under the chairmanship of the Hon. D. L. Campbell, Premier, and that the Cabinet Committee considered and fully supported the submissions made.

I might say, Mr. Chairman, that one reason for putting in that introductory statement is to emphasize perhaps again that Manitoba's submissions were given full and serious consideration by the Manitoba Government and by the Cabinet in particular.

THE CHAIRMAN: We have to presume that.

MR. SHEPARD: Yes, sir. Manitoba's submissions, namely the Brief of Points, the Premier's Submission at the regional hearing in Winnipeg on June 1, 1949, and the evidence of Mr. Moffat at the Ottawa hearings, have, of necessity, with a few exceptions, been of a general character. We say of necessity because it was not possible with a staff which did not have available to it the necessary information and technical assistance as to railway operations to give to this Commission the benefit of submissions sufficiently detailed to constitute a more or less complete suggested solution to some or all of the many problems which this Commission is required to consider under its terms of reference. Our failure to make more detailed recommendations points up, in our view, the vital necessity of protecting the public interest in the matter of railway rate

(Page 21370 follows)

regulation, by adequate legislation and by an inquiring attitude of mind on the part of the members of the Board of Transport Commissioners, including the taking of initiative by that Board, providing for adequate tests to be applied to any and all railway submissions, whether these be in the field of rate-making, accounting or engineering.

Manitoba's submissions have dealt in the main with matters of principle and it is in support of these principles that this argument is made.

The first two chapters of Manitoba's submission in Ottawa deal with matters relating to the general attitude and philosophy which should be adopted in approaching the broad problem of transportation in Canada, and the remaining nine chapters outline Manitoba's views as to how the main issues in Canadian railway rate regulation should be determined under an administrative board.

It is recognized that some of the views expressed in Chapters I and II have been critically examined as will be discussed later. At the moment we refer to them only in order to state and to emphasize that they are essentially matters of opinion on which there is bound to be room for honest differences, although we will submit that the alternatives to the views expressed by Manitoba, because of the rigidity flowing from such alternatives, would not be acceptable to the people of Canada. Whatever may be the recommendations of this Commission relating to control of matters of policy by the Government as put forward in Chapters I and II of Manitoba's submission, the balance of our submissions are not dependent upon the adoption of the policy we have advocated.

It is proposed in developing this argument, first to adopt the sequence suggested by Mr. Covert in his memorandum of December 16, 1949, and secondly to deal with matters not specifically mentioned in Mr. Covert's memorandum. In accordance with the expressed wishes of the Commission, we will refrain from repeating in argument the details of our submission, but we will include page references thereto as found in the transcript and in the printed copy of the Manitoba submissions.

I hope, Mr. Chairman, that it might be acceptable if I do not read out or give out verbally all the references in this argument. The reporter has a copy and as long as he follows it perhaps it would save time and be a more coherent presentation if I did not give page references every paragraph or so.

THE CHAIRMAN: When you come to your proposed amendments, I understand you set them all out here?

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: Then we will have to go carefully into this.

MR. SHEPARD: Yes, sir. That is something that perhaps we can discuss now. There are two ways of approaching the proposed amendments. One would be to deal with them as such at the beginning of my argument. I would prefer, if it is all right with the Commission, to deal with them when I come to the subject to which they are related.

THE CHAIRMAN: Yes, I think that is the best way.

MR. SHEPARD: All right, sir.

THE CHAIRMAN: And you have set them out in your written argument?

MR. SHEPARD: Well, I have set them out together,

sir, near the beginning of the argument, and then I have referred back to them various subjects to which they are related.

THE CHAIRMAN: That would be the best way to deal with it.

MR. SHEPARD: Yes, sir.

Mr. Covert's memorandum first refers to the general character of the terms of reference found in P.C. 6033 and then proceeds to suggest topics ~~requi~~ requiring comments under the more specific terms of reference which are found later in the Orderin Council.

Before dealing with Section 2, P.C. 6033, each Province is requested to state definitely the economic, geographic and other disadvantages (in precise form) under which it claims to be adversely affected by transportation difficulties.

ECONOMIC, GEOGRAPHIC AND OTHER DISADVANTAGES

At the opening of the regionalhearings of this Commission in Winnipeg on the 1st of June, 1949, a submission was made by the Hon. Douglas L. Campbell, Premier of Manitoba, which is found in Vol. 2, commencing at p.45, and in the printed copy of Manitoba's submissions commencing at p.19. Premier Campbell dealt with the more important of the economic and geographic disadvantages in Manitoba under the following headings:

Transportation in the Canadian economy:	.
	Vol. 2, p.48;
	printed copy, p.20.

Transportation on the Prairie economy:	.
	Vol. 2, p.52;
	printed copy, p.21

Markets for agricultural products:	.
	Vol. 2, p. 58;
	printed copy, p.25

Supplies which must be brought in:	Vol.2, p.59; printed copy,p.25
Fluctuating income and rigid costs:	Vol. 2, p.60; printed copy,p.25
Canadian trade policy:	Vol. 2, p.65; printed copy,p.28.

It is not proposed to review the substance of the submissions given in the references just quoted. It is our view that these references show in sufficient detail that there can be no doubt that Manitoba is in a location which constitutes a geographic disadvantage from a transportation point of view, since its location results in its people feeling the incidence of long haul transportation charges on incoming and outgoing traffic. Furthermore, the economy of Manitoba is such that the bulk of its primary products must be exported from the area of production, and the bulk of its consumer products must be imported from the areas of manufacturing, a long distance from the area of consumption.

Manitoba must accept these geographic and economic disadvantages, but it is not prepared to accept a rate structure which is discriminatory in a manner that accentuates the burden already cast upon it by long haul transportation charges.

Another point in regard to geographic and economic disadvantages so far as Manitoba is concerned is that the rate structure should not discriminate against any area, nor should it discriminate in favour of any area. In other words, freight rates as such should not be used as a medium for the artificial development of industrial or other economic areas.

There is one other aspect of the matter of economic and geographic disadvantages which should perhaps be mentioned. In Manitoba the primary products of agriculture constitute heavy railway tonnage relative to

the value of the product shipped and therefore the transportation element is a higher percentage of the total cost of production than it would be with commodities of higher value and less bulk, irrespective of the rates charged in any given area.

Our concern on this matter before this Commission is that the already heavy burden of transportation charges cast upon Manitoba should not be unfairly increased and that the rate structure together with the supervision thereof by the Board of Transport Commissioners should be such as to ensure fair and proper treatment to the people of Manitoba. If effect is given to our submissions on several matters including equalization, Manitoba does not ask that railway freight rates should be used in an attempt to compensate for its economic and geographic disadvantages. We do however insist that railway freight rates should not themselves make our economic and geographic disadvantages more serious.

ANOMALIES IN EXISTING TARIFFS OF
TOLLS AND RATES

P. C. 6033 refers in its opening paragraph to "certain anomalies which are said to be found in existing tariffs of tolls and rates". This is the second matter on which Mr. Covert has requested Provincial Counsel to comment. Since we intend to deal with anomalies in more detail, we propose at this point simply to enumerate them.

Chapter 9 of Manitoba's submission is entitled: "Characteristics of the Over-All Rate Structure" (Vol. 45, p. 8720; printed submission p.113). It makes certain suggestions which will be referred to later as to the type of rate structure which would be most suitable in Canada. In particular it advocates that rates for

the same traffic over the same distances should be equal in all parts of Canada unless there are compelling reasons for departing from equality. It sets our criteria for departure from equality, recommends periodic review by the Board of Transport Commissioners of rate concessions, recommends a uniform class rate structure, and refers to trans-continental rates, agreed charges, and mixing privileges. Each of these matters will be the subject of separate comment during consideration of the more detailed subjects referred to in Mr. Covert's memorandum. Each is mentioned here only because in Manitoba's view, each constitutes an anomaly in the existing tariffs of tolls and rates.

Chapter 10 (Vol. 46, p. 8764; printed submission p. 125) of the same submission is entitled "Regional Considerations" and deals generally with the difference in rate levels East and West in the past and at present, and expresses concern that East - West differentials may be aggravated in the future unless machinery is provided to prevent such an eventuality. It is also pointed out that even with equal rate levels East and West, operating costs are lower in the West, which produces greater regional profitability in the West than in the East.

These are matters which will be the subject of further comment and are mentioned here as constituting anomalies in the existing tariffs of tolls and rates.

NATIONAL TRANSPORTATION POLICY

Paragraph 2 of Mr. Covert's memorandum reads:

"Counsel should recommend what measures should be initiated in order that the national

transportation policy may best serve the economic well-being of all Canada. This might properly include Counsel's proposal as to what should constitute Canada's national transportation policy."

As pointed out in Manitoba's evidence (Vol. 43 p. 8372: printed submission p. 44-45), Manitoba's submissions have dealt with the problems of railway transportation with particular emphasis on the problems that have been brought into sharp focus as a result of the recent rate cases before the Board of Transport Commissioners.

Manitoba recognizes that one of the main duties cast upon this Commission by its terms of reference is to make recommendations as to what should constitute Canada's national transportation policy: it is assumed that such a policy, of necessity, would embrace all forms of transportation, by rail, road, water and air.

It is also recognized that it is a task of extreme complexity to correlate the various forms of transportation in such a manner that each form is properly regulated to operate in its most economic sphere.

The task is made more difficult by at least four factors:

Firstly, the fact that railway rates are subject to regulation only to the extent that the Board of Transport Commissioners has jurisdiction to fix class and commodity rates which are a ceiling, but their jurisdiction with respect to competitive rates is such that the railways are free to fix such rates at any level they choose below the ceiling of the class rates; always on the theoretical assumption, of course, that the

competitive rate fixed in any instance satisfies the tests as to its compensatory nature.

Secondly, regulation of trucking rates does not exist in some Provinces, while in those Provinces which do regulate trucks it pertains only to a relatively small percentage of trucks, i.e., the for-hire vehicles; and furthermore there is no effective interprovincial trucking rate regulation.

Thirdly, the rate regulation pertaining to inland steamships is limited to package freight and grain, the latter being fixed by the Board of Grain Commissioners; this leaves approximately 60% of inland water freight being carried at unregulated bulk rates. (See evidence of Hazen Hansard, K.C., Vol. 70, p. 14314).

Fourthly, the rate regulation of air transportation is at present under the jurisdiction of the Air Transport Board, an administrative Board entirely separate from the Board of Transport Commissioners.

It is suggested that any intelligent consideration of the national transportation problem must give due recognition to the substantial changes that have resulted in the position of the railways in our economy from the development of highways, the internal combustion engine, aircraft, and pipelines. It is submitted that regulation of the competitors of the railways will not restore them to their pre-1920 position when they enjoyed a virtual monopoly in the transportation field. (See Fairweather evidence (Vol. 110, p. 20184).

Having mentioned the underlying problems affecting transportation, it is proposed to discuss the feasibility of formulating a national transportation

policy to overcome them.

The word "policy" used in reference to national transportation is susceptible of at least two meanings.

Firstly, the term national transportation policy might imply the adoption of a plan of control by one central authority of all forms of transportation by rail, road, water and air, with a view to integrating these various forms to best serve the further development of a well rounded Canadian economy. If such is the proper implication of the meaning of the term, Manitoba submits that such a policy is neither necessary nor desirable in Canada at the present time.

Secondly, if by national transportation policy is meant an assessment of existing transportation agencies with a view to determining whether on a competitive basis, one with the others, they are functioning in an economic manner, Manitoba submits that if effect be given to its submissions as to how the railway problem may be alleviated, the present treatment of transportation problems by the governments, both Dominion and Provincial, is adequate and is preferable to a centralization of control of all forms of transportation.

If at some time in the future it should be suggested that an integrated policy of control and regulation of all forms of transportation be formulated, there are certain obvious problems which would be difficult to overcome. One such problem is constitutional, namely the divided jurisdiction between the Dominion and the several Provinces. This matter is of particular importance with reference to trucking which will be commented upon in later argument. Another

problem is the practical difficulty of enforcing any policy which might require the public of Canada to use different forms of transportation for different types of shipments or hauls. The regimentation of the shipping public to fit in with such a policy would, in Manitoba's view, be contrary to the established principles of free enterprise in the commerce of a democratic nation.

Obviously no national transportation policy of the kind that would regulate the use to which land, water and air transportation might be put by the public of Canada could ever be formulated unless all forms of transportation should be controlled by the Dominion Parliament and that control might even require nationalization. Manitoba would oppose any such suggestion and does not consider that circumstances exist today, or are likely to arise, to justify such drastic action.

Then the next subject, Mr. Chairman and Members of the Commission, is dealt with by quoting the amendments to the Railway Act as suggested should be done by Mr. Covert's memorandum, and I would suggest that I move on to the following subject, which is that of rates, which is on page 18 of my memorandum of argument. I would suggest that the statute amendments might be included in the record at this point for future reference.

THE CHAIRMAN: Well, you will refer back to them?

MR. SHEPARD: Yes, sir, I will.

SUGGESTED AMENDMENTS TO THE RAILWAY ACT

Paragraph 3 of Mr. Covert's memorandum requests Counsel to submit the text of amendments to the Railway Act which, it is believed, should be recommended as guidance to the Board in such matters as general freight rate revisions. The amendments suggested by Manitoba appear on the record in Vol. 108, starting at p.19,999. It is suggested that it is appropriate to include them at this point in argument so that they will be available for reference as required.

The amendments are as follows:

Section 33.

Amend Section 33 by adding thereto the following sub-sections:

- (6) Notwithstanding the provisions of Sub-section (2) of Section 9 of this Act the Board is an administrative tribunal and its orders, decisions, rules and regulations shall be construed accordingly. The Board shall not be bound in any way by its previous decisions, procedure or practice.

(note: The purpose of this amendment is to make it clear that the doctrine of stare decisis does not apply to the Board).

- (7) Upon any hearing the Board may hear any evidence which in its opinion is relevant to the matter and shall not be bound by the legal or technical rules of evidence nor shall it be restricted to making a decision based only upon the evidence taken at the hearing.

(Note: The purpose of this amendment is to make it clear that the Board is not restricted to court rules of evidence and that it should gather evidence by its own independent investigation).

Section 36.

Amend Section 36 by adding thereto the following sub-section:

- (2) It shall be the duty of the Board to act on its own motion in respect to matters under its jurisdiction when in the opinion of the Board such action is in the public interest and particularly in respect to the matter of just and reasonable rates.

(Note: The purpose of this amendment is to require the Board to act on its own motion, particularly in reviewing the just and reasonable character of rates.)

Section 38.

Amend Section 38 by adding thereto the following sub-section:

- (2) The Governor-in-Council may also give general directions to the Board in respect to the policy to be followed by the Board in the exercise of its jurisdiction under this Act.

(Note: This amendment permits the Government to give directions to the Board.)

Section 52.

Repeal Sub-section (1) of Section 52 and substitute therefor the following:

- (1) The Governor-in-Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, review, rescind, change, alter or vary any order, decision, rule or regulation of the Board, whether such order or decision is made inter partes or otherwise and whether such regulation is general or limited in its scope

and application, and remit any matter to the Board with directions respecting the disposition thereof; and any order which the Governor-in-Council may make with respect thereto shall be binding upon the Board and upon all parties.

(Note: This amendment broadens the powers of the Governor-in-Council.)

Section 325A.

Amend the Railway Act by adding thereto the following section:

325A(1) Notwithstanding the requirements of this Act with respect to filing tariffs of tolls the Board shall, without the necessity of prior filing of tariffs, have full jurisdiction to inquire into, hear and determine an application by or on behalf of any party interested for an increase or decrease of tolls by reason of changing conditions or costs of transportation.

Note: This amendment together with 325A(2) regularizes the procedure now followed by the Board in general rate cases. The Railway Act in its present form requires firstly the filing of tariffs by the Railways and secondly, if objection is taken thereto, an application must be made for suspension.)

(2) Any order made under this Section may authorize the filing of tariffs as required by this Act giving effect to the increase or decrease ordered.

(Note: See 325A(1) above.)

(3) The Board in determining any application under this section shall have due regard to -

- (a) The establishment and the maintenance of equality of tolls between various localities in Canada;
 - (b) All charges and expenses of the company, including maintenance charges;
 - (c) Whether or not the railway is operated efficiently and with due regard to any savings which have been, or should have been effected, including savings under the Canadian National - Canadian Pacific Act;
 - (d) The cost of operating any particular service and without restricting the generality of this paragraph the cost of passenger service;
 - (e) The level of rates set to meet competition and whether or not such rates are compensatory.
- (Note: This amendment requires the Board in dealing with general rate cases to consider the following matters: equality, expenses of the railways, savings through cooperation, cost analysis and competitive rates.)
- (4) In determining an application under this section it shall be the duty of the Board to make independent studies and investigations in respect to the financial and other affairs of the company for the purpose of safeguarding the interests of the public generally or any portion thereof.
- (Note: This amendment requires the Board to make independent studies.)

Section 325B.

Amend the Railway Act by adding thereto the following sections:

- 325B(1) Notwithstanding anything contained in this Act it shall be the duty of the Board to maintain a constant supervision over tariffs of tolls with a view to insuring that all rates are compensatory

and that no deviation from the principle of equality is permitted unless the railways meet the onus of justifying such deviation.

(Note: This amendment requires the Board to insure constantly that rates are compensatory and that there is no departure from equality unless justified by the railways).

- (2) The Board may require the railways or any one or more of them to establish and maintain such revenue and expense accounts as it may prescribe for the purpose of determining whether or not the rates or any one or more of them are compensatory.

(Note: This amendment permits the Board to require the railways to make revenue and expense analyses).

- (3) The Board shall disallow as unjust and unreasonable any rate which is not compensatory.

(Note: This amendment requires the Board to disallow non-compensatory rates).

- (4) No rate shall be considered compensatory which does not return to the railway the out-of-pocket costs together with some reasonable amount in excess thereof.

(Note: This amendment defines compensatory rates).

Section 325C.

Amend the Railway Act by adding thereto the following section:

- 325C(1) In the case of a company with assets other than those used or useful in operating its railway including inland and connecting coastal steamship lines, it shall be the duty of the Board, for rate making purposes, to require the segregation of those assets and income therefrom from the other assets and income of the company.

- (2) The Board shall have full jurisdiction to determine the proper segregation.

(Note: Section 325 C provides the machinery for segregation of assets and income between rail and non-rail.)

Section 328.

Repeal Section 328 of the Act and substitute therefor the following:

- 328 - The tariffs of tolls which the company shall be authorized to issue under this Act for the carriage of goods between points on the railway shall be divided into two classes -
- (a) the standard freight tariff; and
 - (b) special freight tariffs.

Section 329.

Repeal Subsection (4) of Section 329.

Section 332.

Repeal Section 332 of the Act.

(Note: The amendments suggested to Section 328, 329 and 332 are necessary to give effect to Manitoba's submission that freight tariffs be reduced from three to two classes.)

Section 438A.

Amend the Railway Act by adding thereto the following section:

438A(1) The Board shall, as soon as is practicable after the coming into force of this section, prescribe:

- (a) A uniform system of accounts applicable to all railway companies or such railways as it deems proper, and the manner in which such accounts shall be kept, and shall fix a period of time within

which the companies shall put into effect such uniform system of accounts;

- (b) For all railway companies the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property.
- (2) Nothing in this section shall require any railway company for corporate purposes to keep its accounts on the prescribed uniform system or charge prescribed depreciation rates.
- (3) The Board or any duly authorized officer or agent shall at all times have authority to inspect and take copies of all accounts, books, records, memoranda or other documents of any railway company.
- (Note: Section 438A embodies Manitoba's submissions with reference to uniform accounting and depreciation.)

Agreed Charges

Repeal Part V of the Transport Act, 1938, C.53
S.C. 1938.

(Note: This amendment gives effect to Manitoba's submission that agreed charges should be abolished.)

R A T E S

In paragraph 3 of Mr. Covert's memorandum we were requested to include in argument recommendations as to twenty-three matters pertaining to rates, and including any amendments to the Railway Act, which in our view are necessary to give effect to our recommendations. We have already submitted the amendments we consider necessary.

Before dealing with these specific items, it is desired to comment briefly on one point of a more general character.

The Canadian Pacific Railway and the Canadian Manufacturers Association as well as certain other organizations, seem to fear that certain proposals made before this Commission, if given effect to, would result in the Board of Transport Commissioners exercising the functions of management, particularly in the matter of control of rates. (C.P.R. Brief Part II, pp.11-20).

Manitoba wishes to make it quite clear that what we desire in connection with rates is something between the present wide-open authority of the Railways to operate under the ceiling fixed by the Board, and the fixing of all rates as is done in the case of an ordinary public utility. Our position is that we think that the railways have had far too much power to adjust rates without reference to the regulatory tribunal in the past and that the exercise of this power has in the past created inequity.

No one suggests that the Government is controlling a streetcar line or the Bell Telephone Company or a power company with respect to its management functions when the Government, whether Federal

or Provincial, fixes the rates for these utilities.

It is our intention to deal now briefly with each of the twenty-three matters pertaining to rates and to indicate whether our views require legislative action or whether we would be satisfied with a recommendation from your Commission to the effect that the statute should remain unchanged but the policies and practices of the Board of Transport Commissioners should be altered in accordance with our submission.

A. Competitive Rates

This subject has been referred to in Chapter 9 of Manitoba's submission in Ottawa, beginning with the heading "Criteria for Departure from Equality" (Vol. 45, p. 8719; printed submission, p. 115).

Manitoba approached the cross-examination of Mr. Jefferson with certain broad concepts in mind. We felt that as the Chief Traffic Officer of the Canadian Pacific Railway he was, or should be, in a position to assist the Commission, by giving to it the benefit of any suggestions that he might have for improvements in the rate structure and for the solution of the vital problem created by competition.

We endeavoured to obtain factual information as to the compensatory nature of the following seven major classes of traffic:

- Competitive Rates
- Trans-Continental Rates
- Agreed Charges
- International and Related Rates
- Commodity Rates
- Standard Rates
- L.C.L. Rates

but Mr. Jefferson was unable to provide this information. It does seem to us that no proper appreciation of the problem of the railways in securing additional or

adequate revenue can occur unless and until the railways have analysed the amount of rail revenue derived from the several classes of traffic and have prepared reasonably accurate estimates of the total cost of each class of traffic and of the net revenue from each class. It is our submission that if such a revenue and cost analysis were made it would reveal that some classes of traffic and some regions of Canada are not producing their proper share of the necessary over-all revenues. Such an analysis would in our view enable certain conclusions to be reached as to the general problem confronting Canadian railways today. We will have more to say on this matter under the general heading of Uniform Accounting, but in this discussion of competitive rates we would like to say that we feel that such an analysis would reveal that the railways are today losing money on certain competitive rates.

THE CHAIRMAN: Is that not a matter which at the present time is quite within the jurisdiction of the Board?

MR. SHEPARD: To make a revenue and cost analysis, sir? We are suggesting --

THE CHAIRMAN: I mean, might they not very well do that in this revision?

MR. SHEPARD: Well, I see no reason why they should not, sir, but in the past they have not. We have suggested a statute amendment which I can refer to your lordship now.

THE CHAIRMAN: This may be the time. Your amendments begin on what page?

MR. SHEPARD: Page 12, sir. The amendment that

has reference to the portion I have just been discussing, sir, is found on page 15, and it is suggested section 325B, subsection 2. It reads:

"The Board may require the railways or any one or more of them to establish and maintain such revenue and expense accounts as it may prescribe for the purpose of determining whether or not the rates or any one or more of them are compensatory."

THE CHAIRMAN: You have a note there.

MR. SHEPARD: Yes, sir. The note simply points out that the amendment would permit the Board to require the railways to make revenue and expense analyses.

MR. EVANS: Permit or require?

MR. SHEPARD: The Board would be in a position to require the railways to make them.

I might mention, Mr. Chairman, that there has been a waybill study which was undertaken, I think, under the jurisdiction of the Board or under the guidance or for the benefit of the Board -- my friends of the railways can correct me if I am wrong in that. Some of the results, as I understand it, of this waybill study are available. My government requested access to the results and it was denied to them, and it did seem to us that a waybill study is the beginning of a traffic analysis as to what type of traffic moves where and how and in what volume, and this waybill analysis, I think I am correct in saying, is the first one that has been made in Canada, and it was started a year or so ago and it is not yet complete. That is my understanding of it. But that is one illustration of something that we think the Board should have done long ago. Actually at the start of the first rate case, the 30% case, the provinces asked for a waybill study,

and we would like to think that the reason that it is being done now may be partly attributable to our request at that time.

COMMISSIONER INNIS: This rather assumes, or do you intend the impression shall be made, that the Board can, so to speak, go in and out of the business of requiring railway statistics? Is it your intention that the Board should require the railways once and for all to set up such revenue and expense accounts and continue them?

MR. SHEPARD: That would be our intention, yes, sir.

I would like also to make reference at this point to Volume 110 of the transcript, page 20166, the evidence of Mr. Fairweather. He made this statement:

"Out-of-pocket costs are not in themselves a determinant."

In other words, out-of-pocket costs are not the yardstick for fixing rates. That is his premise in this statement:

"Out-of-pocket costs are not in themselves a determinant. They are, as I see it, a very useful tool to aid management in reaching a decision. They know what they are doing, they do the thing with their eyes open and they know what is involved, and they balance the benefits against the disabilities and make their decisions on that basis."

THE CHAIRMAN: In the long run that means that they do ascertain the out-of-pocket costs in each case.

MR. SHEPARD: Well, the only evidence we have on the record --

THE CHAIRMAN: I do not see what else it can mean.

MR. SHEPARD: The only evidence we have on the

record before this Commission, in Manitoba's view --

THE CHAIRMAN: I am talking of this particular quotation.

MR. SHEPARD: As to this particular quotation from Mr. Fairweather, I think that the C.N.R., according to his evidence, do do a cost analysis now, but the C.P.R. have never done it.

MR. EVANS: Perhaps, Mr. Shepard, that is not quite so.

THE CHAIRMAN: The C.P.R. must do it to some extent, since they have given us a rule based on --

MR. EVANS: Yes, they do.

MR. SHEPARD: That is correct. It is perhaps too broad to say the C.P.R. have never done it. The C.P.R. tests as to the compensatory nature of a rate, as I will submit later on, are not acceptable to us.

THE CHAIRMAN: They may not be; they would include this.

MR. EVANS: That again does not tell the story, because their tests are one thing and our studies are another, and there is evidence of studies as well as tests.

THE CHAIRMAN: I think it would be as well, Mr. Evans, if you just made a note of these things for later reference, and did not answer them just now.

MR. EVANS: Well, I hope if I may make a statement that is not accurate I will be interrupted.

THE CHAIRMAN: A contrary view has been expressed. You will not suffer by it at all.

MR. SHEPARD: So long as Mr. Covert clocks the interruptions I do not mind them, sir.

THE CHAIRMAN: So long as you do not exceed your time. Your time has been limited.

MR. SHEPARD: I know it has, yes, sir.

Much publicity has been given to the so-called favourable level of rates on grain and grain products, and certain other commodities, e.g. farm implements in Western Canada. But very much less attention has been directed to the low construction, operating and maintenance costs in the West which have enabled the railways to show very good profits in the West, even with rates which look low when expressed in terms of revenue per ton mile or when compared to rates in other regions or for other types of traffic where operating costs are much higher. The result has been a widespread belief that Western Canada is being subsidized by low freight rates. It is Manitoba's submission that such a belief is false and that an examination of the changes in rate levels brought about by competition would inevitably result in the conclusion that Western Canada has in the past and is today subsidizing Central Canada in the matter of freight rates.

The freight payers of Ontario and Quebec have the benefit of railway rates depressed by competition to a level substantially lower than they would otherwise be. In 1948 the railways increased nearly all rates by 21%. They further increased competitive rates by 15% in September of that year with the result that the disparity between the East - West level was significantly reduced. Subsequently, by the 8% interim and 16% judgments, the non-competitive rates were increased with no corresponding increase in competitive rates. Thus the East - West disparity in rate level has been once more aggravated.

I might add that if the 4% application of the railways is granted, this East-West disparity will be

further aggravated.

I would also like to direct the attention of the Commission to Exhibit 49/211 which was filed in the recent hearing of the 4% application before the Board. It is headed, "Estimate of Additional Gross Revenue from a 16% Increase in Freight Rates," and it shows that on competitive rates -- I think my friend Mr. Evans referred to it as a one per cent gift to his friends of the provinces -- they are counting on increasing competitive rates 1% and an estimated revenue of \$347,572. The increase on intra-Canadian rates, which is the bulk of the rates that we in the prairies pay, and is the bulk of the standard and commodity rates on intra-Canadian traffic, including the long-haul traffic, is taking a 16% increase, which will yield to the C.P.R. \$20,489,177. So on the 16% increase that is the C.P.R.'s own estimate, \$347,000-odd increase from competitive rates, which is a gift to the western and the other provinces, and an increase on intra-Canadian rates, yielding \$20,489,177.

The obvious result is that the burden of these last increases and any increases that may be awarded in the future will fall with particular weight upon the long-haul traffic on which there is, in large measure, still a monopoly. It is therefore apparent that the impact of general rate increases --

THE CHAIRMAN: When you say "still a monopoly" you mean no truck or water competition?

MR. SHEPARD: That is right, sir, yes.

It is therefore apparent that the impact of general rate increases is felt in far greater degree by, for example, the people of the Prairies, than by the people of the St. Lawrence valley. We, in Manitoba, do not ask special concessions because of

our economic or geographic disadvantages but we do insist that it is grossly unfair to burden us with heavy freight charges where part of such charges are made necessary by reductions in rates in another area due to competitive factors in that other area.

COMMISSIONER ANGUS: Would you take the same view, Mr. Shepard, if part of the charges were made necessary by the loss of traffic by the railways in the other area?

MR. SHEPARD: We recognize that there has been traffic lost, of course, sir, and because of lost traffic, I take it from your question, what you have in mind is that the same volume of heavy overhead --

COMMISSIONER ANGUS: Suppose the railways priced themselves out of their market in the other area and did not get any revenue, would you think it unfair that your rates should be increased to make good the deficiency?

MR. SHEPARD: There might be an economic limit beyond which we could not pay, but as far as fairness is concerned, on the basis of fairness, I think the transportation system should stand on its own feet if possible.

THE CHAIRMAN: I do not understand what you mean. I do not think it answers the question.

MR. SHEPARD: Well, perhaps I do not understand the question, Dr. Angus.

COMMISSIONER ANGUS: My question is this: You say that if your rates are being increased in part because no more revenue can be obtained from competitive rates and they have to remain fixed, that is unfair to you, and I am asking, would you also consider it unfair if your rates had to be increased because the railways lost their traffic to competitors in the other area and did not get any revenue there at all?

MR. SHEPARD: I think my answer to that would be this, that we would not ask the railways to put up competitive rates and invite the losing of the traffic, unless they were actually taking in less revenue from that traffic than they were spending to get it. Does that answer your question, sir?

COMMISSIONER ANGUS: Not quite. I am asking you to distinguish between types of high rate that might be charged on traffic in Manitoba. Type number one is the one you described as unfair.

MR. SHEPARD: Yes, sir.

COMMISSIONER ANGUS: Type number two would be the same sort of increase resulting from the railway raising their competitive rates and in that way losing all or part of the traffic.

MR. SHEPARD: I think I understand your question, sir. In other words if the time should come when only long haul traffic was paying all the cost of the transportation in this country, would Manitoba be content to pay that?

COMMISSIONER ANGUS: Yes.

MR. SHEPARD: I don't think they would be.

THE CHAIRMAN: What then would you propose?

MR. SHEPARD: I would think, and it is a very broad question - -

THE CHAIRMAN: It seems rather a live question, because you are complaining about the existence of these competitive rates.

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: That they throw a corresponding burden upon you.

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: Suppose they are all abolished and all these rates go back to the ceiling where now they have competitive rates?

MR. SHEPARD: Of course we are not asking that.

THE CHAIRMAN: And as a consequence the railways lose traffic or the rates are so high that they lose traffic. How then could you complain? You have asked for that much, haven't you?

MR. SHEPARD: We would not complain as long as the western economy (and I am speaking for Manitoba) is enabled to continue to live; but if the transportation charges as a result of the condition Dr. Angus has put to me, should become so heavy that production would dry up in the Manitoba area, it would reduce the standard of living in the Manitoba area so that purchasing power would be reduced and there would be less volume for the railways to haul in that area.

THE CHAIRMAN: You think then that these competitive rates in the east might be increased to such an extent that they can produce lower rates in the west without losing traffic in the east?

MR. SHEPARD: I cannot presume to say that at this time.

THE CHAIRMAN: Then it is pretty hard to see what your solution is. You are opposed to these competitive rates as they now function?

MR. SHEPARD: No, ~~not~~ absolutely not. We are not asking that the railways should not be in a position to set competitive rates, providing they meet



the test - -

THE CHAIRMAN: Haven't you the competitive rates as they are now and rising higher rates in the west?

MR. SHEPARD: Oh, yes.

THE CHAIRMAN: Then therefore you object to them?

MR. SHEPARD: No, we would not object.

THE CHAIRMAN: Then what do you want to have done? How do you wish to meet that?

MR. SHEPARD: We develop later in my argument, sir, two or three points as to where we think that the railways are entitled to get additional revenue or can make savings which would be equivalent to additional revenue, reflected in their net position.

THE CHAIRMAN: You cannot say that without having recourse to these competitive rates?

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: Without having recourse to them?

MR. SHEPARD: Yes.

THE CHAIRMAN: One way and another you don't like these competitive rates?

MR. SHEPARD: The thing we do not like about them (I thought it was a very simple matter) is that they do result in a rate increase being applied to the long haul area of the country.

THE CHAIRMAN: That is quite right. Therefore you say what? .: You say, put them up?

MR. SHEPARD: No, we say put them up if they can, but we don't want them to lose money.



THE CHAIRMAN: You have some other solution for that difficulty which you are going to expound?

MR. SHEPARD: We have two or three ideas, sir, as to where we think the railways might improve their net position.

COMMISSIONER ANGUS: You might take up one more point in connection with my question. You say: It is grossly unfair to burden us with heavy freight charges where part of such charges are made necessary by the reduction of rates in another area due to competition.

MR. SHEPARD: Yes.

COMMISSIONER ANGUS: I asked my question and I understand your answer to be this, really. That if there were loss of traffic in other areas because of effective competition, it could not be met without rates which were not compensatory and which you say must not be charged; but then, although that would cause you great hardships, it would not be grossly unfair?

MR. SHEPARD: Oh, it would definitely be grossly unfair.

COMMISSIONER ANGUS: It would be grossly unfair?

MR. SHEPARD: Yes, and we say that Western Canada would make a lot of noise about it.

COMMISSIONER ANGUS: But unfairness on the part of whom?

MR. SHEPARD: Well, it would just be unfair to the people in the west.

COMMISSIONER ANGUS: Yes, but who would be

unfair, would it be an impersonal unfairness?

MR. SHEPARD: It would be the result of a competitive situation that the railways certainly are not to blame for, and perhaps the truckers are not to blame for, but the impact of this competitive situation in central Canada would result in an unfair burden being placed on the long haul freight payers.

THE CHAIRMAN: Unfair in respect of whom?

MR. SHEPARD: It would be heavier than it would otherwise be.

THE CHAIRMAN: Who should be made responsible for it then? You say you do not blame the railways and you would not blame the truckers. How would you compensate for it then?

MR. SHEPARD: As I said a moment ago, I think that at that time you would have to have a close look at the Western economy.

THE CHAIRMAN: You have been having a look haven't you?

MR. SHEPARD: We are not at the point we are discussing now, sir. It might result in a subsidy being paid. Otherwise western economy might dry up.

THE CHAIRMAN: And a subsidy paid to whom?

MR. SHEPARD: To the railways.

THE CHAIRMAN: Oh, to the railways?

MR. SHEPARD: Yes, sir. If you came to the point, as I understand Dr. Angus's question, of having the entire railway transportation bill of this country paid by the long haul traffic, it might be too great a burden to place on the people at the extremities of the country.

COMMISSIONER ANGUS: I quite agree with that, Mr. Shepard. I am merely trying to distinguish between something that is a hardship, in the way in which great floods are a hardship, and something that is unfair in the sense that you feel that you have a grievance against someone. I am perhaps reading that into these words "grossly unfair" when you don't mean it to be there.

MR. SHEPARD: No, I just meant that it would result in an unfair burden on the people I represent. I am not blaming anybody.

THE CHAIRMAN: Your particular word "unfair" is not perhaps being used - -

MR. SHEPARD: I have heard that word so often in the last couple of years that I use it by force of habit.

---RECESS

---UPON RESUMING

MR. SHEPARD: I was at the bottom of page 21, I think, sir, when we adjourned.

The myth that the West is receiving special concessions in the matter of freight rates should be replaced by a recognition of the fact that Central Canada is now being subsidized by the freight payers in the long-haul areas of Canada.

Having recognized the vital importance both to the railways and the long haul freight payer of the problem created by the necessity for competitive rates, Manitoba makes the following recommendations for the implementation of which statute amendments have already been suggested.

THE CHAIRMAN: Now we go back to your amendments.

MR. SHEPARD: Yes, the first one is that the railways should be forbidden.- -

THE CHAIRMAN: The railways should be forbidden to carry non-compensatory traffic.

MR. SHEPARD: Yes, sir.

MR. COVETT: Page 15.

MR. SHEPARD: Page 15, Section 325B (3) which reads:-

"The Board shall disallow as unjust and unreasonable any rate that is not compensatory".

And the note is that this amendment requires the Board to disallow non-compensatory rates.

I think perhaps I should say that since drafting that amendment, Manitoba does recognize that there might be, particularly in the light of Mr. Fairweather's evidence, instances where a non-compensatory rate would be justified. What I have in mind at the moment is, Mr. Fairweather's evidence when he referred to rates that were put in, for instance, to a mining area, where the railway could see in the course of the foreseeable future profitable traffic, but in order to develop that traffic they probably would not carry the rate in a compensatory manner for the first year or perhaps a little longer, of operation.

THE CHAIRMAN: If I understand that amendment then, you would say that no non-compensatory rate should be allowed to become operative unless ^{for} special reasons to be set out by the Board, is that it?

MR. SHEPARD: Something of that order, yes.

THE CHAIRMAN: Over a limited time?

MR. SHEPARD: Yes.

COMMISSIONER INNIS: You don't say how you determine whether traffic is compensatory.

THE CHAIRMAN: In the amendment just before that one, that amendment is destined to provide a way of determining whether the rates or any one of them are compensatory.

MR. SHEPARD: Yes, sir, then sub-section (4) of the same Section, the bottom one on page 15:-

"No rate shall be considered compensatory which does not return to the railway the out-of-pocket costs together with some reasonable amount in excess thereof."

That would be the definition.

THE CHAIRMAN: Now, you are modifying that in view of something Mr. Fairweather said.

MR. SHEPARD: Yes, we recognize now, as perhaps we had not before, that it would hurt the economic development of the country or could hurt the economic development of the country if that was a hard and fast rule, that all rates must be compensatory.

THE CHAIRMAN: You would say then in the case of developmental lines, for a while non-compensatory rates might be tolerated?

MR. SHEPARD: Yes, sir, and then our second suggestion on page 22 is:-

"The Board of Transport Commissioners should be required to keep constant checks on all special rates, and if satisfied that any such rates are so low that costs exceed revenues..... "

(and this again is subject to what I have just said)

".....should be required to order the railways either to increase the rates or to forego the traffic and eliminate the losses". That is set out again in Section 325B that we have been looking at.

THE CHAIRMAN: Is that the same page or a different page?

MR. SHEPARD: Page 15.

COMMISSIONER INNIS: Do you indicate anywhere the test that you would use to determine a compensatory rate, or do you accept Mr. Jefferson's tests?

MR. SHEPARD: No, we don't, very definitely. We consider, sir, that there should be a revenue and cost analysis to determine - -

THE CHAIRMAN: That is what you provide in 325B (2), isn't it?

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: That is where the test would be worked out?

MR. SHEPARD: That is quite true.

COMMISSIONER INNIS: I should think you would need something more than that if you were going to get any satisfactory results as to what you mean by compensatory or out-of-pocket costs. That is a flexible term.

MR. SHEPARD: Well, it is, because with these flexibilities it is very difficult to define when you come to draft legislation. We ~~endeavoured~~ to get something more exact or definitive but without too much success.

THE CHAIRMAN: That is what you thought you were getting, because you say in this (2):-

".....for the purpose of determining whether or not the rates or any one or more of them are compensatory."

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: That is what you say in this. Then the amendment permits the Board to require the railways to keep such revenue and expense accounts as it may prescribe for the purpose. Do you intend there should be some machinery whereby the Board could satisfy itself that any particular rate is or is not compensatory?

MR. SHEPARD: Yes, and we do develop that further in our accounting section of the argument in its relationship to the problem of rate making.

COMMISSIONER INNIS: You do develop the same specific test ?

MR. SHEPARD: No, I am afraid we don't, the tests that you have in mind, sir, because we didn't know what they would be.

THE CHAIRMAN: Now then, on page 22 that you have just referred to, these two paragraphs nos. 1 and 2, you have modified paragraph 2 in view of what you said about developmental lines.

MR. SHEPARD: Yes, sir. Then the second matter pertaining to rates that we have been asked to comment upon is international and related rates.

Manitoba accepts the evidence of Mr. Jefferson to the effect that the present system of increasing the Canadian portion of international and related rates in accordance with increases granted by the I.C.C. in the United States is necessary and no change is recommended in regard to the method of handling these rates.

COMMISSIONER ANGUS: If I could come back to page 15, at 325B (1) you have: "Deviation from the principle of equity"?

MR. SHEPARD: That should be "equality".

COMMISSIONER ANGUS: Which is right?

MR. SHEPARD: "Equality", and I should also perhaps point out to the Commission that 325B (1) has been altered.

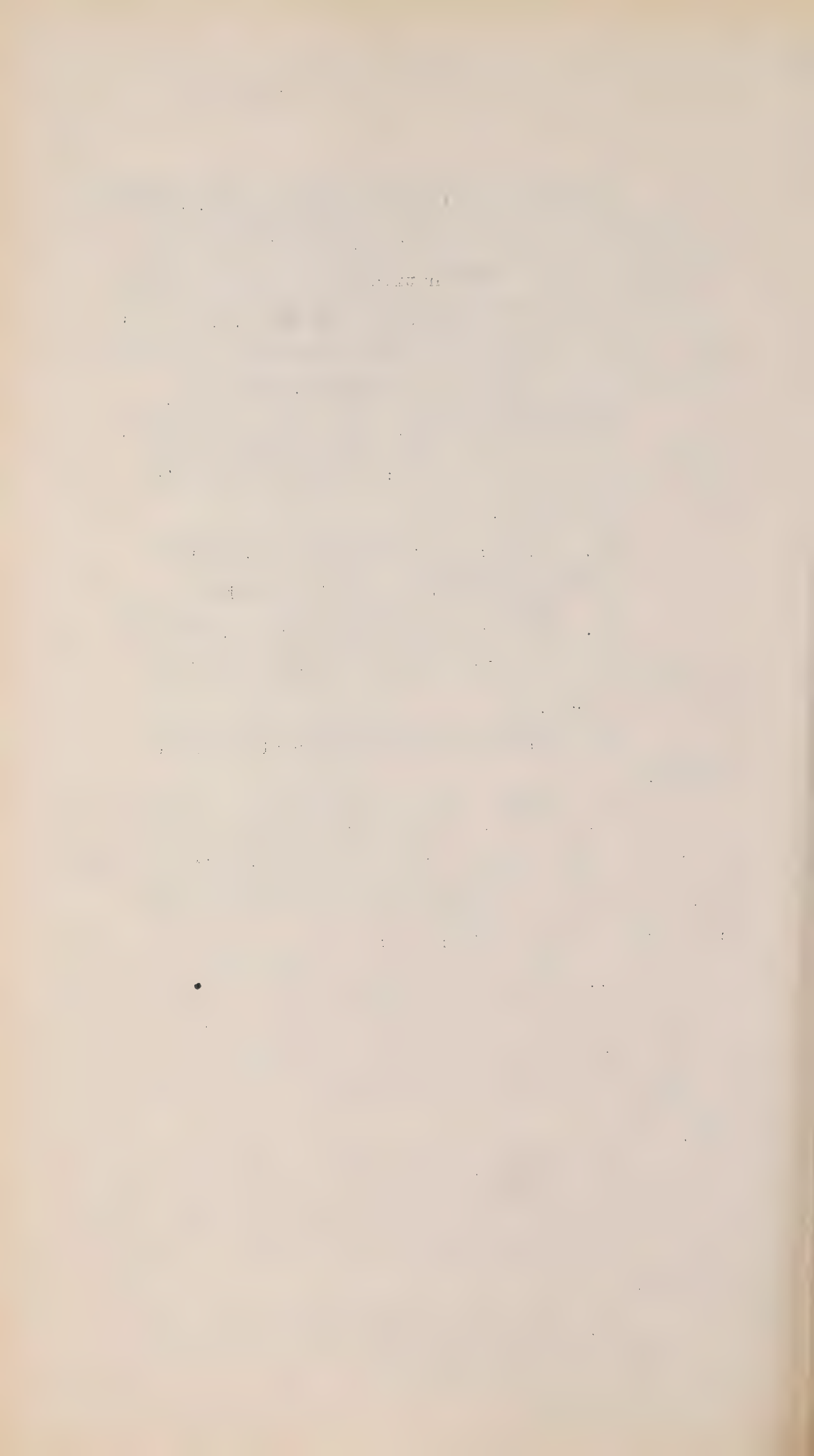
THE CHAIRMAN: Somebody corrected mine to "equality".

MR. SHEPARD: Yes, it should be "equality", but it has been added to since I first filed it some time ago, and the words that have been added are the last three lines of sub-section (1):-

"....that no deviation from the principle of equality is permitted unless the railways meet the onus of justifying such deviation."
We neglected to put in the reference to equality in 325B.

THE CHAIRMAN: If you are drafting this to be incorporated just as you have drafted it, into the Statute, some of the language there -- you say for instance:-

"....and that no deviation from the principle of equality is permitted."



And before that you have said:-

".....the Board to maintain a constant supervision over tariffs of tolls with a view to insuring that all rates are compensatory, and that no deviation from the principle of equality is permitted....."

When you say "is permitted", you really mean "exists". "permitted" means something that somebody allows another person to do.

MR. SHEPARD: Yes, I think probably "exists" would be a better word. We are not putting this forward as a model of draftsmanship.

THE CHAIRMAN: I thought you had. I thought that is what you wanted as the draft.

MR. SHEPARD: We would be quite content to have that improved. Then on page 23, sir, if we may leave that section now, the next two headings that Mr. Covert requested comment on were: "Classification" and "Distributing Rates and Town Tariffs". In Manitoba's submission there is an expression of its views on uniform class rates which we quote:-

"We feel that your Commission should recommend that standard mileage class rates, distributing class rates and town tariffs should be consolidated into a single uniform basic class rate structure applicable to all parts of Canada and that any deviation from that uniform pattern should be treated as exceptions subject to the tests which have already been suggested."

Then in Chapter XI of the Manitoba Brief the suggestion

is made that an additional number of classes be established at rates lower than the present 10th class rate, so that a greater percentage of traffic will move at class rates and will consequently be under more adequate control by the Board of Transport Commissioners.

This would mean that traffic moving at commodity mileage rates would move under the extended class rates. Mr. Jefferson agrees that this would be desirable but that it would take time.

It is further suggested that if this new classification is adopted, the Railway Act be amended to provide for a rate structure comprised of (1) Class rates, and (2) other rates; the latter to include all competitive and commodity rates.

We have at page 16 the suggested change there, which is a re-wording of Section 328. 328 of the Act in its present form, sir, sets out three classes of rate. The wording is similar to our suggested re-draft except that we have two classes of rates. The present 328 has the standard freight tariff as (a), special freight tariffs as (b), and competitive tariffs as (c). We are suggesting the removal of the competitive tariffs and they would then become classified as special rate tariffs, with the result that the rate structure, as we envisage it, would be standard rates with more classes, standard class rates with more classes, the additional classes to include a large number, if not all, of the present commodity rates, and the bulk of rates that are now classified as special rates, and that is all other rates.

THE CHAIRMAN: You mean, special would take

the place of the competitive rates and commodity rates?

MR. SHEPARD: No, sir. The special would take the place of all competitive rates and all other rates not classified as standard.

THE CHAIRMAN: Yes, and commodity rates would come into the classification?

MR. SHEPARD: Yes, sir, and the changes in 329 and 332 are made necessary by the change from three to two classes of rates.

THE CHAIRMAN: You think it is practicable for the Commission to fix all these special freight rates at any one time?

MR. SHEPARD: Well, I don't think that they would start with today's rate structure and throw it away and fix a rate for every commodity today. I think there would have to be a transition from the existing system, but our main object is, if possible, to get more control by the Board of Transport Commissioners over the policing of rates.

THE CHAIRMAN: So that all the competitive rates, now existing, would have to come back to the Board to be checked?

MR. SHEPARD: No, we are not suggesting that.

THE CHAIRMAN: But they may be special freight rates.

MR. SHEPARD: They would be special freight rates, but the provisions in the Act now which apply to special rates, Section 331, those provisions would now apply, in our scheme of things, to competitive rates as well as other special rates.

THE CHAIRMAN: I see. What is 331?

MR. SHEPARD: 331 says:-

"Special freight tariffs shall be filed by the Company with the Board, and every such tariff shall specify the date of the issue thereof and the date on which it is intended to take effect."

Then sub-section 2:-

"When any such special freight tariff reduces any toll previously authorized to be charged under this Act, the Company shall file such tariff with the Board at least three days before its effective date."

In other words, to reduce a tariff - -

(Page 21418 follows)

THE CHAIRMAN: Is it under this section that competitive rates are now dealt with?

MR. HUME: No, sir; competitive rates are now under section 332, and we are suggesting that it be repealed.

THE CHAIRMAN: Oh, yes; it mentions competitive tariff.

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: You would repeal 332 and leave 331 as it is?

MR. SHEPARD: That is right, sir; and we consider that it is adequate, because I know that my friends of the railways throughout these hearings have referred to the necessity of being left free to meet competition quickly and not hampered by regulatory control in fixing competitive rates; but sub-section 2 of 331, which I have just been reading, requires the tariff to be filed at least three days before its effective date, and we do not consider that that would impose an undue burden upon the railways.

THE CHAIRMAN: What sub-section did you say?

MR. SHEPARD: Sub-section 2 of 331, sir. It refers in the third and fourth line down to a three-day notice by filing a tariff before making a reduction, and our point is that to meet competition it is normal that the rates are being reduced.

THE CHAIRMAN: I beg your pardon?

MR. SHEPARD: In order to meet competition the railroads normally have to reduce the rates, not increase them. Sub-section 3 of section 331 requires a thirty-day notice to increase special tariffs.

THE CHAIRMAN: You would leave that as it is?

MR. SHEPARD: We would leave that as it is, because we do not consider that a notice to increase competitive

rates would jeopardize the railways' competitive position.

THE CHAIRMAN: Then you are quite sure that if you strike out 332 and leave 331 there is still room within 331 for competitive rates?

MR. SHEPARD: Yes, sir, that would be our view on the plan we have in mind.

Going back to the top of page 24, sir:

It is recognized that this Commission could not be expected to work out in detail a new rate structure: that is a matter for the Board of Transport Commissioners in consultation with the railways and other interested parties. Manitoba does submit, however, that this Commission is in a position to recommend the suggested changes in legislation in this regard, and to lay down certain principles to guide the Board in its future deliberations.

E. Developmental Rates

Manitoba does not express any view on this subject except that we do not agree that uneconomically low freight rates should be used as a means of establishing industry in a location that would otherwise be uneconomic.

COMMISSIONER ANGUS: Does "uneconomically low" mean the same thing as "non-compensatory"?

MR. SHEPARD: I would say so, sir, yes.

Expiry Rates

Manitoba submits that there is no valid reason for permitting expiry rates to remain as such as a permanent part of the rate structure and that those at present in existence should be considered as special rates properly fixed as such and should only be changed after an opportunity has been afforded to interested

parties to be heard before the Board of Transport Commissioners.

THE CHAIRMAN: There are still expiry rates in existence, are there?

MR. SHEPARD: I think there are, sir. There were some that were the subject of comment earlier in the hearings. I have not got them noted at the moment.

The next subject that Mr. Covert refers to is export rates, and Manitoba makes no submission on this subject.

Then the matter of equalization...

COMMISSIONER ANGUS: Mr. Shepard, when you say that an opportunity is being afforded to interested parties to be heard before the Board, you say nothing about the principles on which the Board should act in hearing them?

MR. SHEPARD: No. All that we are dealing with here, Dr. Angus, is what appears to us to be an anomaly or an unfairness in having these expiry rates simply expire by the failure to renew them, and then the freight payer of that particular rate finds himself paying a much higher rate, because once the rate has expired he pays the class rate, and some of these rates, my recollection is, had been in effect for many years.

COMMISSIONER ANGUS: Let me assume that one of these rates is non-compensatory; would it be knocked out by your previous amendments?

MR. SHEPARD: Oh, yes, I would think it should be. To be consistent, we would have to agree with you on that, sir.

COMMISSIONER ANGUS: And if an expiry rate becomes non-compensatory, perhaps, by an increase in labour costs or something of that kind, which dominates? The amendment or this procedure?

MR. SHEPARD: Well, I think that our whole point on this expiry rate matter is that the freight-paying public of expiry rates should not be placed in a position different from that of any other freight rate payer who is given notice of an increase. Under section 331 to which we have just been referring, an increase must be filed thirty days before its effective date. Expiry rates, as I understand it, simply expire, and after that the traffic moves at the class rate applicable, and we consider that that is not a proper state of affairs.

Equalization

Item 3 in Manitoba's Brief of Points reads as follows:

"3. It is our submission that it should be a fundamental principle of the Canadian freight rate structure, that freight rates charged for the same traffic over the same distance should be equal, except where costs, competition and the needs of national development, require some deviation from that principle."

The matter is also referred to in Vol 45, p. 8701, et seq.; printed submission pp. 113 and 114.

It is submitted that this Commission should recommend that the Railway Act be amended in order to ensure the establishment of equality, where operating conditions and the character of the traffic are equal, and when once established, the preservation of equality should be ensured by:

(a) requiring the Board of Transport Commissioners on its own initiative to maintain a constant review of the rate structure to ensure that no element of discrimination in violation of the principle of equalization is permitted;

(b) requiring the Railways to meet the onus of establishing the need and justification for deviations from uniformity and requiring any such deviations to be subject to approval by the Board of Transport Commissioners. (See suggested Sections 325A(3)(a) and 325B(1)).

THE CHAIRMAN: Then there are amendments.

MR. SHEPARD: Yes, sir. One of them we have already looked at which is 325B; the other one is section 325A(3), sub paragraph...

THE CHAIRMAN: What page is that on?

MR. SHEPARD: Page 14, sir, 325A(3)(a):

"The Board in determining any application under this section shall have due regard to -

(a) The establishment and the maintenance of equality of tolls between various localities in Canada;"

I might make a broad comment...

THE CHAIRMAN: Just a minute - "between various localities in Canada."

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: Can you give us an instance of what you have in mind there?

MR. SHEPARD: Well, what we have primarily in mind is the disparity in rate levels east and west, sir, between eastern Canada and western Canada.

THE CHAIRMAN: You see, we already have in that section - I think it is 314, isn't it?

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: An application for equality of rates on the same line of railway, with the same kind of cars, and so on. Is what you have here an explanation of that?

MR. SHEPARD: Well, I think it would be broader than that, sir. What we want is a rate structure in which

there is equality of rate as between different areas of Canada for moving the same type of traffic over the same type of ground, over the same distance.

THE CHAIRMAN: So that a movement of a certain commodity one hundred miles in Nova Scotia should be exactly the same as the movement of the same commodity 100 miles in Alberta?

MR. SHEPARD: Well, subject only, sir, to the possible exception that if operating costs in one large area of Canada are substantially different, that is, either higher or lower, than operating costs in another area, it might be necessary to take them into consideration as well.

THE CHAIRMAN: I see. You say here that the Board shall only take this first class, (a), into consideration along with other considerations.

MR. SHEPARD: Yes, sir; there are a number of them set out. I was going to mention, sir, that 325A has been drafted for the purpose of guidance to the Board primarily in general rate cases rather than dealing with individual rates, and that is its primary function. 325B has been drafted...

THE CHAIRMAN: Pardon me a moment. Are you quite sure, though? You see, 325A says:

"Notwithstanding the requirements of this Act with respect to filing tariffs of tolls the Board shall, without the necessity of prior filing of tariffs, have full jurisdiction to inquire into, hear and determine an application by or on behalf of any party interested for an increase or decrease of tolls by reason of changing conditions or costs of transportation."

Have you in mind there just a general revision? Otherwise it sounds as if anybody in any region at any time could come along and say that by reason of changing conditions or costs of transportation something should be done. Isn't that right?

MR. SHEPARD: Well, actually, the way it is worded is:

" . . . on behalf of any party interested for an increase or decrease of tolls . . . "

THE CHAIRMAN: Who would be interested for an increase in tolls excepting the railways?

MR. SHEPARD: Well, that is what we primarily had in mind, sir. Under the existing legislation, technically the railways should not go in and file an application for a general increase. The requirements of the Railway Act, the sections to which we have been referring, 329, 330 and 331, are that if the railways wish to increase their rates they are under those sections required to file the tariffs, and then technically to comply literally with the letter of the statute someone should object and then there would be a hearing; but what has been done in practice in the past and has been acted

upon after persuasion by the Supreme Court, by the provinces, has been that the railways file an application for prior authority to increase their rates.

Now, section 325A(1) as we have drafted it is designed to regularize the procedure. It is set out in the note following that section on page 14:

"This amendment together with 325A(2) regularizes the procedure now followed by the Board in general rate cases. The Railway Act in its present form requires firstly the filing of tariffs by the Railways and secondly, if objection is taken thereto, an application must be made for suspension."

So that is what we had in mind; it may be imperfectly expressed.

THE CHAIRMAN: Well, the language you have here would entitle anybody to apply for a decrease in tolls at any time, not only when there was a general revision under way but at any time.

MR. SHEPARD: I did not mean to imply general revision. I meant general rate cases, sir, either upward or downward. That is the intent of the section, and perhaps the wording could be improved.

THE CHAIRMAN: I thought you said a while ago that you intended it to apply to revisions, general revisions.

MR. SHEPARD: If I did say that I was mistaken, sir.

THE CHAIRMAN: So then you would leave the whole of 325, would you, as it is, and add 325A(1)?

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: Are you really adding anything to

Mr. Shepard

what the Board has power to do today?

MR. SHEPARD: We consider that we are, sir. It is rather a technical type of amendment, perhaps, but it does regularize what the Board has done in the past.

THE CHAIRMAN: Well, you simply say that the Board shall have full jurisdiction to inquire into, hear and determine an application by or on behalf of any party interested for an increase or decrease of tolls by reason of changing conditions or costs of transportation. It seems to me the Board is doing that now.

MR. SHEPARD: They are doing it, sir, but our point is that they are not, strictly speaking, under the sections in the Act empowered to do it in the way that they are now doing it. It is a matter of --

THE CHAIRMAN: They are acting outside of the proper way; is that it?

MR. SHEPARD: Well, that is our argument. But it does not affect the result. We are not complaining of the procedure as followed as it is, but we think that it should be regularized by this amendment.

THE CHAIRMAN: You say that the amendment together with 325A(2) regularizes the procedure now followed by the Board in general rate cases.

"The Railway Act in its present form requires firstly the filing of tariffs by the Railways and secondly, if objection is taken thereto, an application must be made for suspension."

Well, I can only say that it strikes me that your language does not apply only to general rate cases.

MR. SHEPARD: I am inclined to agree with you, sir. It perhaps should be looked at again.

THE CHAIRMAN: All right.

MR. SHEPARD: I think I say at the top of page 26,

sir:

Manitoba disagrees with the views expressed by Mr. Jefferson of the Canadian Pacific Railway (Vol. 76, p. 15396), that equalization cannot be effected so long as grain rates are fixed by statute.

During the consideration of the Crow's Nest grain rates we expressed our views as to the manner in which the grain rates in Western Canada should be dealt with, namely, that they should remain under control of Parliament. Manitoba does not consider that a scheme of equalization is in any way dependent upon the Board of Transport Commissioners having jurisdiction over all rates. Manitoba is prepared to have the level of grain rates as fixed by statute today taken into account in any consideration of the problem of equalization East-West.

THE CHAIRMAN: Would you explain that?

MR. SHEPARD: It simply means, sir, that our friends of the railways have said that it will be necessary for the freight payers of other traffic to subsidize low grain rates. Quite apart from the fact as to whether they are compensatory or not, we now say that if that is so we are content to have that done.

THE CHAIRMAN: To have what done?

MR. SHEPARD: We are content to have the other rates somewhat higher than they would otherwise be.

THE CHAIRMAN: Oh, yes, I see -- on other commodities.

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: You say:

"Manitoba is prepared to have the level of grain rates as fixed by statute today taken into account in any consideration of the problem of

equalization East-West."

That is to say, you would be prepared to bear a higher burden in other cases in order to equalize some advantage you are getting out of the Crows Nest rates.

MR. SHEPARD: Yes, sir; but what we do say as well, sir, is that at the present time there is a disparity between the general level East-West in favour of the East, and that that has to be corrected at the same time.

THE CHAIRMAN: Well, there is a disparity of six and a fraction per cent, according to you.

MR. SHEPARD: That was according to us at the time the evidence went in, but since that rates have gone up percentagewise more, the eastern rates, the competitive rates, which are largely in the East --

THE CHAIRMAN: Have you worked out the present rate of discrimination, then?

MR. SHEPARD: I have not, sir. We could perhaps get that for you and put it on the record.

THE CHAIRMAN: Does it mean this, that instead of asking for the whole of what was then six and two-thirds per cent to be removed, you would be satisfied to have only half of it removed?

MR. SHEPARD: Well, that would depend on what was the result.

THE CHAIRMAN: When you say that the rates fixed by statute are to be taken into account, that means something must be done about that?

MR. SHEPARD: Exactly.

THE CHAIRMAN: ". . . in any consideration of the problem of equalization East-West."

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: That is, the equalization must be effective against you in respect of other hauls or other

commodities, by reason of these special grain rates.

MR. SHEPARD: That is on the assumption that the grain rates are not paying their proper share today.

THE CHAIRMAN: Yes, I understand, on that assumption.

MR. SHEPARD: Which we do not expect.

THE CHAIRMAN: Well, you say:

"Manitoba is prepared to have the level of grain rates as fixed by statute today taken into account" --

MR. SHEPARD: Taken into account.

THE CHAIRMAN: -- "in any consideration of the problem of equalization East-West."

MR. SHEPARD: Yes, but by having them taken into account we are neither admitting nor denying --

THE CHAIRMAN: If they should turn out to be non-compensatory or not sufficiently compensatory you will give up some other claim you might have for equalization in other respects, in respect of other commodities.

MR. SHEPARD: That is right, sir.

THE CHAIRMAN: I see.

MR. SHEPARD: It is actually, sir, the total revenue picture East-West as opposed to the total cost picture East-West that we are concerned with.

THE CHAIRMAN: There is one thing that must not be touched, and that is the Crows Nest freight rate.

MR. SHEPARD: Well, we were not absolutely definite for all time to come as to their level. We were definite as to who should control them, and that was Parliament.

THE CHAIRMAN: Yes, I understand. When I say "not touched", I mean not taken away from Parliament.

MR. SHEPARD: That is right, yes.

Quite apart from the fact that in our view the principle of equalization can be given effect to without having all rates fixed by the Board of Transport Commissioners, we submit that a comparison of grain rates in Western Canada with grain rates in Eastern Canada is not a comparison of like with like because the character of the traffic and the costs of railway operation are different in the two areas. Manitoba is strongly of the view that there is no logic in suggesting that because the rates in Eastern Canada and in Western Canada apply to the same commodity, namely, grain they should be equalized in complete disregard of these differences.

The differences there are the character of the traffic and the costs of railway operation in the two areas.

THE CHAIRMAN: Which are less burdensome, you say, in the West than in the East.

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: I mean less burdensome to the railways.

MR. SHEPARD: Less burdensome to the railways, yes, sir.

1. Horizontal Increases

Manitoba's views with respect to this subject are found in Chapter VIII of its Ottawa submission (Vol. 45, p. 8692 et seq; printed submission p.109).

Manitoba opposes the application of horizontal percentage increases and supports the arguments of the other provinces in this regard.

Now, my understand is that my friend Mr. Smith, and I think Mr. Barry, and I think perhaps one other

western counsel will be dealing with that subject in more detail.

J. Industrial Location (Rate Relationships)

Manitoba expresses no views on this subject.

K. Inter-line Rates

Manitoba expresses no views on this subject.

L. Level of Rates

Manitoba's views on this subject have already been referred to under the general comments on the anomalies in the existing tariffs of tolls and rates.

THE CHAIRMAN: We will adjourn now.

---The Commission adjourned at 4.45 p.m., to meet again at 10.30 a.m. on Wednesday, May 3, 1950.

- - - - -

THE UNIVERSITY OF CHICAGO

THE DIVISION OF THE PHYSICAL SCIENCES

DEPARTMENT OF PHYSICS

PHYSICS 311

LECTURE 1

THEORY OF QUANTUM MECHANICS

PROFESSOR J. J. SCHROEDINGER

ASSISTANT PROFESSOR J. J. SCHROEDINGER

LECTURE 2

THEORY OF QUANTUM MECHANICS

AR
Canada
ROYAL COMMISSION

INQUIRY ON

TRANSPORTATION

EVIDENCE HEARD ON

MAY 3 1950

VOLUME 119

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ROYAL COMMISSION ON TRANSPORTATION

May 3, 1950
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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO
WEDNESDAY,
MAY 3, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D. - CHAIRMAN
HAROLD ADAMS INNIS - COMMISSIONER
HENRY FORBES ANGUS - COMMISSIONER

G. R. Hunter
Secretary

COUNSEL APPEARING:-

F.M. Covert, K.C.	}	Royal Commission on Transportation
G.C. Desmarais, K.C.		
H.E. O'Donnell, K.C.	}	Canadian National Railways
H.C. Friel, K.C.		
C.F.H. Carson, K.C.	}	Canadian Pacific Railway
F.C.S. Evens, K.C.		
I.D. Sinclair		
J.J. Frawley, K.C.)	Province of Alberta
J. Paul Barry)	Province of New Brunswick
C.D. Shepard)	Province of Manitoba
M.A. MacPherson, K.C.	}	Province of Saskatchewan
F.C. Cronkite, K.C.		
C.W. Brazier)	Province of British Columbia

Ottawa, Ontario,
Wednesday, May 3, 1950.

M O R N I N G S E S S I O N

THE CHAIRMAN: All right, Mr. Shepard.

MR. SHEPARD: May it please the commission, when we adjourned yesterday evening we were just beginning discussion on the subject of level of rates, which is dealt with on Page 27 of our memorandum of argument.

Our views on this subject must be considered with our views on rate equalization which have already been expressed.

It is not proposed to go into the details of the contents of Chapter X of Manitoba's submission. It is, however, pointed out that there is a heading "Danger That Differential Will be Greater in the Future". The recent 16% general increase authorized by the Board of Transport Commissioners illustrates the danger envisaged. The 16% increase has been applied to non-competitive rates with the result that the East-West differential in rate levels has once more been aggravated.

THE CHAIRMAN: By the way, I suppose you intend to work out the present proportion of discrimination which you think now exists?

MR. SHEPARD: Yes, my lord.

THE CHAIRMAN: You mentioned that yesterday.

MR. SHEPARD: I have looked into that matter over night, and it is dependent upon our being able to get from our friends of the railways the 1949 figures. Then there is a calculation to be made from them which cannot be done too quickly. If it is agreeable to the commission I propose perhaps to put it in in reply, which will give us an opportunity of having it completed by that time.

: This same Chapter X in our submission includes a

On 10/10/1914, the
Government of the United States

has the honor to acknowledge the receipt of your letter of the 10th inst.

and in reply to inform you that the same has been forwarded to the proper authorities.

It is to be regretted that the authorities have not yet been able to make a decision on the matter, but it is hoped that a final decision will be reached in the near future.

Very respectfully,
The Secretary of the United States

Enclosed for you are two copies of the report of the Commission on the subject of the proposed amendment to the Constitution.

Very truly yours,
The Secretary of the United States

Enclosed for you are also two copies of the report of the Commission on the subject of the proposed amendment to the Constitution.

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The Secretary of the United States

an explanation of how the computation of east-west differential in rates was made. Our friends of the railways have criticised the computation, and in particular have criticized the exclusion of grain traffic both East and West.

Then, sir, there is following an excerpt from Manitoba's submission which I do not think it is perhaps necessary to read, explaining why the grain traffic east and west was included. I should like it just to be taken into the record now, and we could perhaps pass on to the next topic.

-- The excerpt is as follows (page 126 of submission):

"The first chapter of this submission pointed out that the people of western Canada are concerned with the rates on grain moving from the point of production to the market. Consequently, our interest in these rates is not restricted to that part of the haul which is purely western. Our interest in the rates on grain from the Bay ports to Montreal is equally

direct and vital. If eastern rates in general are lower than rates being charged in the West, it is no comfort to us to be told that the situation will be corrected by raising grain rates in the East and holding western grain rates low. The impact of such a change rests squarely and almost exclusively in the West.

Adjustments of the rates on grain between 1946 and 1948 were made which raised the eastern portion of the rates by approximately 30%, while the western portion remained unchanged. It is our contention that such an adjustment can in no way be considered as a step towards the equalization of the regional rate levels. It is for this reason that the remainder of this chapter proceeds in disregard of

"rates on grain, and the comparisons which it contains are based on all traffic other than grain."

THE CHAIRMAN: You say your interest in these rates is to follow the grain up to the port of export, to Montreal?

MR. SHEPARD: My understanding of our interest in the eastern grain rates is that they are at a higher level now, admittedly, than the western level.

THE CHAIRMAN: Yes.

MR. SHEPARD: And in so far as they affect the western farmer, we are interested in them. To a considerable extent of course they do affect only local movement in the eastern part of Canada.

THE CHAIRMAN: But to some extent they affect your grain too.

MR. SHEPARD: Yes.

THE CHAIRMAN: You say that it is no answer to your complaint against discrimination to say that the rates in the east have been raised in this particular, because it is your goods that are being raised.

MR. SHEPARD: That is our submission.

THE CHAIRMAN: Or the rates on your goods.

MR. SHEPARD: Yes.

COMMISSIONER ANGUS: Am I right in thinking that your submission about the level of rates may in practice involve the question of subsidies to the railways?

MR. SHEPARD: Bearing in mind the discussion we had
and
yesterday afternoon, the ultimate possibility of the burden being too heavy on the west, I think perhaps that is so.

COMMISSIONER: ANGUS : And perhaps even for this reason:

if you say that the profits are larger in the west than in the east, therefore the western rates should be reduced, but the rates cannot be raised in the east, shall

we say, that would mean that there was a gap that would have to be filled by a subsidy, would it not?

MR. SHEPARD: Yes. In our Ottawa submission, during the hearings here, we did go that far as far as a subsidy was concerned, as long as it was not labelled a subsidy in aid of the west. Our view was that that type of subsidy would be one brought about by the reduction of revenue in the eastern areas.

COMMISSIONER: ANGUS: The question I wanted to lead up to was really one of procedure. Which of these three things do you have in mind? Do you have in mind that the Board of Transport Commission^{ers} should grant adequate rates and then say that if the provinces want rates reduced, they must go to the parliament of Canada and ask for a subsidy in reduction of the rates which they think are too high? That is one procedure. A second procedure would be for the Board of Transport Commission to grant inadequate rates, -- I mean adequate and inadequate from the standpoint of railway revenue -- and say to the railways: "If you prefer to go to parliament and apply for a subsidy, to going bankrupt, you are free to do so". Or do you envisage a third thing which would be that the Board of Transport Commissioners should fix inadequate rates but itself make a recommendation to parliament that a subsidy should be paid to the railways and then should say to the railways: "If parliament does not act on our recommendation, you can apply to us again"?

MR. SHEPARD: If I were limited to those three, I think I would select the third one.

COMMISSIONER: ANGUS: I do not want to limit you if you have a fourth.

MR. SHEPARD: A possible fourth one that occurs to me would be that the determination of all the factors involved in

deciding how much of a burden the long haul traffic can bear in Canada would in my view be essentially a matter of national concern and perhaps should be dealt with primarily by parliament. If as a matter of national policy, parliament should determine that rates can only go to a certain level, it might be possible for them to restrict the heights to which the level of rates could go in a directive of some kind to the board. Then on the understanding that if the railways are to continue as they are today, parliament would have to make the necessary arrangements for any deficiency as a result of putting a ceiling on that level.

COMMISSIONER ANGUS: The effect of that being that if the cost of railway operation were increased, for instance, by reason of a labour dispute, then the cost would be passed on almost immediately to the taxpayers by parliament.

(Page 21436 follows)

MR. SHEPARD: I think in the long run that would be the effect. That is one of the important reasons why Manitoba is seeking, if possible, to avoid this matter of subsidy because we recognize that it is not a cure, and it may only aggravate an ill rather than cure an ill. One of the aggravations that might result perhaps would be the encouragement of labour to make continued and repeated demands with the knowledge that they would have that whatever deficiency was in existence would be made up by a subsidy.

COMMISSIONER ANGUS: While you are trying to avoid subsidies, doesn't this suggestion of equalizing profits between East and West make them almost necessary?

MR. SHEPARD: It could make them necessary depending on the result of an analysis of operating costs and revenues in the two areas, yes, sir.

M. Long and Short Haul Clause

Manitoba supports the submissions made by Alberta on this subject on which Mr. Frawley will be giving the full argument.

The C.P.R. has endeavoured to show that there is a difference of opinion between Manitoba and Alberta since Alberta sets out five criteria (see Alberta Long and Short Haul Brief, p.111) while Manitoba has indicated that it would be satisfied if the two tests enunciated by Mr. Walker are applied. A careful comparison of the two sets of criteria in Manitoba's view reveals that in effect they are identical; the Alberta presentation being simply an elaboration and a more detailed exposition of Mr. Walker's principles.

THE CHAIRMAN: You say that Alberta's presentation is an elaboration and detailed exposition of Mr. Walker's principles.

MR. SHEPARD: Yes,

THE CHAIRMAN: I have not the Alberta brief here.

MR. SHEPARD: Mr. Walker's tests, Mr. Chairman, were, to paraphrase them, first of all that the rates set would not be any lower than necessary to meet competition.

THE CHAIRMAN: Competition by trucks?

MR. SHEPARD: Any competition.

THE CHAIRMAN: Not by another railway.

MR. SHEPARD: Except with another railway.

THE CHAIRMAN: What is that?

MR. SHEPARD: Not by another railway, no. This is in fixing competitive rates. Mr. Walker's tests were that the rates set would not be any lower than necessary to meet competition, and secondly would always be sufficient to pay to the carrier its out-of-pocket costs plus something in addition to them.

THE CHAIRMAN: What has that got to do with what Alberta said?

MR. SHEPARD: Alberta, at page 111 of its Long and Short Haul Brief has set out five criteria opposed to the two criteria that constitute Mr. Walker's tests.

THE CHAIRMAN: Five criteria.

MR. SHEPARD: For fixing competitive rates.

THE CHAIRMAN: You say the five taken together amount to the same thing.

MR. SHEPARD: To the same thing.

THE CHAIRMAN: As Mr. Walker's three?

MR. SHEPARD: Mr. Walker's two.

THE CHAIRMAN: Three. In the first place it must not be any lower than is necessary to meet competition. Secondly it must contain all out-of-pocket

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costs and third something in addition.

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: I think he divided it into three. You might call it two if you like. You say that Alberta's five come to the same thing.

MR. SHEPARD: Yes. We say an analysis of the two sets of criteria will show that there is no difference between them.

THE CHAIRMAN: You say that the C.P.R. claims there is a difference between them.

MR. SHEPARD: Yes, they have made reference to that in their brief and in argument.

N. Market Competition

Manitoba expresses no views on this subject.

O. Minimum Carloads

Manitoba expresses no views, except that as a matter of principle we consider that carload minimums should not be discriminatory in one area in relation to any other area.

P. Mixing Privileges

Manitoba's views are already on the record in Volume 45, at p. 8761 et seq.; printed submission p.123, to the effect that the present eastern mixing rules should be applied throughout Canada. To this view should perhaps be added the comment that if the present eastern mixing rule should be applied throughout Canada, it should be done without disturbing any other special arrangements that may now be in effect with regard to any particular commodity or group of commodities.

Q. Arbitrariness

Manitoba expresses no views on this subject.

R. Treatment of Basic Commodities

Manitoba makes no detailed submission on this point. It is obvious that market competition requires freight rates on basic commodities to be kept low enough to keep the traffic moving. This is a fundamental to the interests of both producers who require transportation to market and railways which require the revenue derived from the transportation of basic commodities.

S. Reparations

Manitoba opposes the adoption of any form of reparations. As discussed with Mr. Jefferson (Volume 76, p. 15461 et seq.) it seems obvious that if a shipper succeeds in recovering from a railway whatever amount may be found to have been collected from the shipper in excess of what should have been collected, the amount recovered would be an extra profit to the shipper, and would very rarely be passed on to the ultimate consumer except in the occasional case where the shipper himself happened to be the final consumer.

T. Segregation of Freight and Passenger

Manitoba fully supports the views of British Columbia that the railways should adopt an acceptable formula by which operating revenues and expenses could be divided between freight and passenger traffic.

There can be no doubt that passenger losses incurred by Canadian railways are today of serious concern to their financial welfare. It is fully recognized that because our railways are essential to the welfare of the Canadian economy their financial health must be maintained.

COMMISSIONER INNIS: Would you go back to page 29 for a minute. At the bottom of the page you say:

"It is obvious that market competition requires freight rates on basic commodities to be set low enough to keep the traffic moving."

Are you thinking of wheat?

MR. SHEPARD: I think probably I would include wheat in that. I was thinking generally of basic commodities and the necessity for not having the transportation factor in the cost so great that it would discourage production of the commodity.

COMMISSIONER INNIS: You say it should be kept low enough to keep the traffic moving. That would have to be very low indeed in the case of wheat.

MR. SHEPARD: In the case of wheat I recognize that because the wheat producer must sell his product to live he has to take what he can get irrespective of the transportation charges.

THE CHAIRMAN: Must not all producers sell their products to live?

MR. SHEPARD: There are products which, under our present form of control, are purchased by the government, for example, under floor price arrangements.

THE CHAIRMAN: Oh, yes, but those are supposed to be only temporary devices. We are talking of freight rates here.

MR. SHEPARD: Yes. I think your statement is quite correct that producers must sell their products to live.

THE CHAIRMAN: I suppose you always have in mind in the case of these particular producers that their market is away off thousands of miles away.

MR. SHEPARD: Yes.

COMMISSIONER ANGUS: I wonder, Mr. Shepard, if you and the railways give quite the same meaning to keeping

the traffic moving. As I understand it, the railway interpretation of that is that the volume of traffic multiplied by the rate should be the maximum. You perhaps mean that the maximum quantity should move no matter how low the rate had to be.

MR. SHEPARD: I think there probably is a slight difference in approach to the problem between my client and the railways.

(Page 21442 follows)

We are interested, of course, in keeping the over-all transportation cost as low as possible, to give our people the highest possible standard of living, as a result of reducing their output, their outgo of dollars to market their products.

COMMISSIONER ANGUS: Yes, but what I mean is this, that if an increase in rates would cause a diminution of shall we say five per cent in volume for ten per cent increase in rates, from the standpoint of the railways that would be keeping the traffic moving.

MR SHEPARD: Yes, sir.

COMMISSIONER ANGUS: Would it be so from your standpoint?

MR SHEPARD: No; from our standpoint we would say that was hurting our western economy.

COMMISSIONER INNIS: That is what you mean here?

MR SHEPARD: Yes, sir.

COMMISSIONER ANGUS: While we are at page 29, there is one small point we might clear up. Under "Mixing Privileges" you say "without disturbing any other special arrangements". Could you give an example?

MR SHEPARD: Yes. What I have specifically in mind there is a matter that was drawn to our attention by Western Grocers, which is a wholesale grocery organization in Western Canada. They have at the present time, as I understand it, an arrangement which enables them to mix carloads of groceries, and it is neither fish nor fowl so far as the eastern mixing rule is concerned. They are not opposing the application of the eastern mixing rule to Western Canada, but they would be very unhappy if it should be applied and at the same time the arrangement that they have for the moving of their commodities should be abrogated.

THE CHAIRMAN: In that case that would be different from the east.

MR SHEPARD: At the present time---

THE CHAIRMAN: And they want to remain that way?

MR SHEPARD: They want to remain the way they are. I do not know just the details of their arrangement, Mr. Chairman, but they do not want it disturbed.

THE CHAIRMAN: Well, what do you want? What does Manitoba want?

MR SHEPARD: We want the eastern mixing rule applied in Western Canada without disturbing any such special arrangements as the one I have just been mentioning.

THE CHAIRMAN: Do you say it is the wholesale grocers who want this?

MR SHEPARD: Western Grocers Limited; it is a company of wholesale grocers, sir.

THE CHAIRMAN: A particular company?

MR SHEPARD: Yes, sir.

THE CHAIRMAN: And you are with them, are you?

MR SHEPARD: Yes. They came to the Manitoba Government and explained their own particular situation to the Government, and after looking into it the Government realized that it would be a disturbing factor if their present arrangement were altered as a result of the eastern mixing rule being applied. I do not really think that the railways intended to alter it, from inquiries we have made.

THE CHAIRMAN: They are wholesalers?

MR SHEPARD: Yes, they are.

THE CHAIRMAN: And the retailers are satisfied too with the same rule, are they?

MR SHEPARD: The retailers in the grocery business, you mean? So far as I know, there has been no representation

made by the retailers.

Then returning to the top of page 31:

According to exhibit 180 the C.P.R. lost in 1948 an estimated \$28,866,961.00 on its passenger operations. We are in no position to support or to challenge the accurate of that figure but it does seem clear that losses on passenger service are substantial.

It has for many years been accepted by the railways and by the Board of Transport Commissioners, that passenger losses are properly chargeable to freight earnings. Conditions have changed so substantially since this attitude was initiated that a different disposition of passenger losses must now be considered.

What are these changed conditions?

Firstly, certain segments of freight traffic are today subject to serious competition from trucks which makes it increasingly difficult for railway rates on that traffic to be raised. The result is a tendency for losses on passenger traffic to fall with increasing weight upon the long haul non-competitive freight traffic which is the backbone of our Western economy.

Secondly, passenger trains are today subject to severe and increasing competition from busses and aircraft which effectively prevents the railways from increasing their passenger fares and which results almost inevitably in increasingly heavy passenger losses.

And I might add there that an additional factor is, of course, the private passenger automobile.

Yet the railways are required to provide passenger service and indeed the maintenance of such service is a statutory obligation (Section

312 of the Railway Act).

It does not seem fair to the railways to require them to carry out a statutory obligation to run passenger trains when such trains are, even with efficient management, operated at a loss, but at the same time it does not seem fair to the long haul freight payer to raise his rates to make up losses on passenger traffic. If it should be concluded that changes in operating techniques and in the use of personnel can not substantially reduce the losses on passenger train service, and if the only possible course of action is to ask someone other than the users of passenger trains to bear the losses on passenger service, then it is our suggestion that it might be preferable to reject the policy of charging passenger losses against freight traffic and to consider the advisability of charging passenger losses directly against the Dominion Government. In other words, if it appears that a continuation of the present policy would mean that long haul non-competitive freight traffic would be permanently called upon to subsidize passenger losses, we suggest that consideration be given to a proposal that the Dominion Government pay the losses incurred by the railways in fulfilling their statutory obligation to carry passengers.

THE CHAIRMAN: You say there all you do is suggest that consideration be given to such a proposal. Well, would you support such a proposal or not?

MR SHEPARD: Yes, we would, Mr. Chairman.

THE CHAIRMAN: You would support it.

MR SHEPARD: When we were dealing with equalization E st-West we suggested that subsidy might be less undesirable than the alternative that had been used in the past. In that connection we said (p.133 printed submission Vol. 46, p.8796).

Of course, the alternative was to load the long

haul traffic with increases.

COMMISSIONER INNIS: Would you be content with that amount?

MR SHEPARD: What amount, sir?

COMMISSIONER INNIS: That is . . . to say, the amount lost on passenger traffic, or do you think that you might need some additional subsidy as well?

MR SHEPARD: Well, the only other suggestion that we have for improving the net operating position of the railways at this point has to do with the l.c.l. traffic, and that is not a suggestion dealing with subsidies at all. We have suggested in our main submission -- and I was just about to read the part from our main submission -- subsidy to offset the failure to increase central Canadian rates would be less undesirable than continuous increases in intra-Canadian rates.

COMMISSIONER INNIS: I am sorry to have interrupted you.

MR SHEPARD: Quoting from our main submission:

"In advocating the use of subsidies in this way we do not wish to leave the impression that we consider subsidies to be a fundamental answer to the problem of meeting the cost of railway operations in Canada. In this particular context, however, we feel that subsidies may be the only way of avoiding a situation in which the region least adequately provided with transportation facilities, and at the same time most heavily dependent upon them is called upon to subsidize indirectly through the freight structure the region which is most amply provided with such facilities."

We would express the same attitude with respect to the question of passenger losses by saying that in advocating the use of subsidies for passenger losses we do not wish to leave the

impression that we consider subsidies to be the fundamental answer to the problem of meeting the cost of railway operations in Canada. In the particular context of passenger losses, however, we feel that subsidies may be the only way of avoiding a situation in which the long haul non-competitive traffic, which is already bearing a disproportionately heavy share of Canada's transportation bill, would be called upon to subsidize a type of traffic, namely, passenger traffic, which is already bearing less than its proper share of railway operating costs.

(Page 21448 follows)

THE CHAIRMAN: Now, you say that "We do not consider subsidies as the fundamental answer to the problem of meeting the cost of railway operations in Canada", but you seem to stretch out and bring them in quite readily whenever - -

MR. SHEPARD: We bring them in perhaps readily, sir, but with a certain amount of reluctance I might say. This is a matter which has caused a great deal of concern to my Government, and we were almost driven to the point by not being able to accept the alternatives.

THE CHAIRMAN: What is the fundamental answer to the problem then?

MR. SHEPARD: There are several ways in which it might work out, and I am sure I am not equipped to say whether it will work out in another way than by subsidy, but railway revenues are bound to increase with the growth of the country. You have got a dependency on the rate of growth to determine how high those revenues may go. Railway costs may be reduced by such measures as our friends of the railways have discussed before this Commission, such as dieselization and improved efficiency of the railway to meet the competition that they are forced to meet in competitive conditions. It is impossible, in our submission, to put a dollar sign on the result of those factors and others as well, but it is not inconceivable that the railways' position may be substantially improved by the development of Canada generally and by reducing their costs through technological advances in the industry.

THE CHAIRMAN: Have you in mind now subsidies to the railways which would enable them to compete with the buses?

MR. SHEPARD: No.

THE CHAIRMAN: For passenger traffic and with trucks for freight traffic?

MR. SHEPARD: No, I would not go that far, Mr. Chairman. In fact I would offer the comment that so far as long haul passenger traffic is concerned, the railways' future is certainly not good. I think that long haul passenger traffic will continue to be lost to the airlines; but it does seem to me that you cannot force the public of Canada to ride in an airplane if they don't want to. The train passenger service must be maintained for that reason, among others.

THE CHAIRMAN: All right.

MR. SHEPARD: Then the subject of special rates, we discussed in our discussion of Sections 328, 329 and 332, and it is perhaps unnecessary to comment on it further. It is included in the argument at that point simply because it was one of the items in Mr. Covert's memorandum.

Then the subject of transcontinental rates. Manitoba has expressed two opinions as follows.

Firstly, that transcontinental rates should not be lower than the level of the Canadian Railways' most serious competition for that traffic, which is the railways of the northern United States.

Secondly, such rates should conform to the Walker criteria for competitive rates generally. These criteria are (a) that the rate must never be less than

the out-of-pocket costs plus a margin above that, and (b) the rate should not be lower than is necessary to meet competition.

Then, on the subject of "Rate Groupings or Blanket Rates", Manitoba expresses no view.

On the subject of "C.N.R. Capital Structure", we would refer the Commission to page 69 of Manitoba's printed submission where it is pointed out that any reorganization of the financial structure of the C.N.R. must take into account a number of factors other than its capital structure, such as its current operating expenses on certain uneconomic lines which have been discussed in some detail by Mr. Fairweather in his evidence on behalf of the C.N.R. (Volume 103, p. 19108 et seq. and p. 19158 et seq.).

It is recognized that the concept of negative capital introduced by the C.N.R. may have some merit as a financial device to offset losses on uneconomic lines, but Manitoba is in no position to offer an opinion as to what would be a proper amount of negative capital or as to the adequacy or otherwise of the C.N.R.'s proposals in this regard.

Later in its argument Manitoba makes reference to the necessity of taking the C.P.R. as the yardstick for rate-making purposes in Canada. We would add that Manitoba is still of the view that the C.P.R. must continue to be taken as a measure or yardstick for rate-making purposes, even if all the capital adjustments suggested by the C.N.R. should be made.

Then the next matter is that dealt with in paragraph 5 of Mr. Covert's memorandum and it deals with paragraph 2(d) of P.C. 6033, and that paragraph I don't think it is necessary to read but perhaps it might be included in the record at this point, dealing with the accounting methods and statistical procedure:-

"Review the present-day accounting methods and statistical procedure of railways in Canada, and report upon the advisability of adopting, (or otherwise) measures conducive to uniformity in such matters, and upon other related problems such as depreciation accounting, the segregation of assets, revenues and other incomes, etc., as between railway and non-railway items."

Manitoba has submitted suggested amendments to the Railway Act dealing with these matters and has also referred to them in evidence.

THE CHAIRMAN: Have you amendments in this Volume?

MR. SHEPARD: Yes, they are Section 438. I think it is page 17. Would you like me to read that Section?

THE CHAIRMAN: Where do they begin?

MR. SHEPARD: At the top of page 17, Mr. Chairman.

THE CHAIRMAN: You had better read them I think.

MR. SHEPARD: Suggested Section 438A(1):-

"The Board shall, as soon as is practicable after the coming into force of this section, prescribe:

- (a) A uniform system of accounts applicable to all railway companies or such railways as it deems proper, and the manner in which such accounts shall be kept, and shall fix a period of time within which the companies shall put into effect such uniform system of accounts;
- (b) For all railways the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property".

Then sub-section (2):-

"Nothing in this Section shall require any railway company for corporate purposes to keep its accounts on the prescribed uniform system or charge prescribed depreciation rates".

THE CHAIRMAN: You think those words "for corporate purposes" are sufficient to indicate what you mean? I think I know what you mean. You might have two systems of accounting, one for the Board, and the other for their shareholders.

MR. SHEPARD: That is the intention, that we are not - -

THE CHAIRMAN: Do you think you are covering that by the use of the words "for corporate purposes"?

MR. SHEPARD: We considered that we were, Mr. Chairman.

THE CHAIRMAN: That is then what you mean?

MR. SHEPARD: That is exactly what we mean, yes. Sub-section (3):-

"The Board or any duly authorized officer or agent shall at all times have authority to inspect and take copies of all accounts, books, records, memoranda or other documents of any railway company".

And this sub-section, according to the note, embodies Manitoba's submission with regard to uniform accounting and depreciation.

THE CHAIRMAN: All right, then we will go back to page 36.

MR. SHEPARD: Yes. Then the matter of statistical procedure is dealt with in Manitoba's brief, and it is not suggested that any statutory amendment is necessary to give effect to your submission.

COMMISSIONER INNIS: This is the Statute dealing with statistics, with Bureau statistics?

MR. SHEPARD: Yes, Dr. Innis. We set out in our submission certain matters that we consider should be available by way of statistical information which are not now available.

COMMISSIONER INNIS: Do you know the position of the Bureau of Transportation Economics in the collection of statistics?

MR. SHEPARD: I am not too familiar with that.

COMMISSIONER INNIS: You have not looked into that?

MR. SHEPARD: No. I do know that the D.B.S. is responsible, I think, for the bulk of statistical data, and the returns filed by the Board, as I understand it, are for D.B. purposes.

COMMISSIONER INNIS: I understood there was a certain amount of duplication between them.

MR. SHEPARD: I am not in a position to give any information on that.

The subject of depreciation is included in the suggested Section 438 A to be added by way of amendment to the Railway Act.

THE CHAIRMAN: Then, back to page 17.

MR. SHEPARD: Yes, we have already read that Section, Mr. Chairman. It is sub-section (2) as I recall it. No, it is sub-section (1) (b), requiring the Board to prescribe the classes of property for which depreciation charges may properly be included, and the rate or rates of depreciation.

THE CHAIRMAN: Yes, go on.

MR. SHEPARD: It is the subject of a special chapter (the subject of depreciation) in Manitoba's submission, commencing at page 75 (Vol. 45, p. 8596). Your Commission is also referred to the evidence of Mr. Cooper (Vol. 100, p. 18728 et seq.) on this subject. It is pointed out that Mr. Cooper is an expert of the highest calibre in the railway accounting field and that his evidence supports Manitoba's submission in every detail.

Manitoba has already expressed the view (Vol. 89, p. 17117) that the necessary amendment to the Railway Act with reference to the matter of depreciation must require the Board of Transport

Commissioners to prescribe the rates or rate of depreciation to be allowed on certain classes of property, the classes also to be prescribed by the Board.

Manitoba is opposed to the C.P.R.'s suggestion that the railway carriers in Canada should be left free to adopt whatever method of depreciation is considered appropriate.

Before leaving the subject of depreciation, reference is made to the evidence of Mr. Newman, for the C.P.R., and Mr. Cooper, for the C.N.R.

In Mr. Newman's evidence (Vol. 93, p. 17661) he indicated that rolling stock wheels were turning only $11\frac{1}{2}\%$ of the time in any one year. This would seem to support Manitoba's view that physical depreciation through use is not the major factor. In Mr. Cooper's evidence (Vol. 100, p. 18734) he indicated that the user method would only be preferable if the use factor in physical depreciation exceeds 50% of all factors compelling ultimate retirement.

Then the subject of "Segregation of Assets and Income Therefrom -- Rail and Non-rail". That is covered by a suggested amendment, Section 325C, which is found on page 16, Mr. Chairman.

COMMISSIONER INNIS: This reference to your opposition to the C.N.R. method of depreciation runs on all fours with Section 438 A (2), in that you still allow them to keep their depreciation for corporate purposes.

MR. SHEPARD: Yes, exactly, and Section 325C on page 16, it might be as well if I read that.

1. The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations

which are satisfied by the functions $u_i(x, y, z)$ and $v_i(x, y, z)$ in the domain D of the space E_3 . It is shown that the system of equations is solvable in the domain D if and only if the functions $f_i(x, y, z)$ and $g_i(x, y, z)$ satisfy certain conditions.

2. In the second part of the paper the problem of the existence of solutions of the system of equations is solved for the case when the functions $f_i(x, y, z)$ and $g_i(x, y, z)$ are polynomials of the coordinates x, y, z . It is shown that the system of equations is solvable in the domain D if and only if the functions $f_i(x, y, z)$ and $g_i(x, y, z)$ satisfy certain conditions.

3. In the third part of the paper the problem of the existence of solutions of the system of equations is solved for the case when the functions $f_i(x, y, z)$ and $g_i(x, y, z)$ are functions of the coordinates x, y, z and of the time t . It is shown that the system of equations is solvable in the domain D if and only if the functions $f_i(x, y, z, t)$ and $g_i(x, y, z, t)$ satisfy certain conditions.

4. In the fourth part of the paper the problem of the existence of solutions of the system of equations is solved for the case when the functions $f_i(x, y, z)$ and $g_i(x, y, z)$ are functions of the coordinates x, y, z and of the time t . It is shown that the system of equations is solvable in the domain D if and only if the functions $f_i(x, y, z, t)$ and $g_i(x, y, z, t)$ satisfy certain conditions.

5. In the fifth part of the paper the problem of the existence of solutions of the system of equations is solved for the case when the functions $f_i(x, y, z)$ and $g_i(x, y, z)$ are functions of the coordinates x, y, z and of the time t . It is shown that the system of equations is solvable in the domain D if and only if the functions $f_i(x, y, z, t)$ and $g_i(x, y, z, t)$ satisfy certain conditions.

6. In the sixth part of the paper the problem of the existence of solutions of the system of equations is solved for the case when the functions $f_i(x, y, z)$ and $g_i(x, y, z)$ are functions of the coordinates x, y, z and of the time t . It is shown that the system of equations is solvable in the domain D if and only if the functions $f_i(x, y, z, t)$ and $g_i(x, y, z, t)$ satisfy certain conditions.

Sub-section (1):-

"In the case of a company with assets other than those used or useful in operating its railway including inland and connecting coastal steamship lines, it shall be the duty of the Board, for ratemaking purposes, to require the segregation of those assets and income therefrom from the other assets and income of the company.

(2) The Board shall have full jurisdiction to determine the proper segregation."

THE CHAIRMAN: Now, what would be the purpose of the segregation?

MR. SHEPARD: Its purpose would be twofold, as I would envisage it, Mr. Chairman. One would be that in determining financial need or in determining the net operating result of the railway on a general rate case, there would then be no dispute as to what items of income and expense should go into the railway operating results. That would be one purpose. The second purpose would be that if at some time in the future a case should be determined on a rate base and a rate of return basis, that the assets from which that income is earned would be allowed either to rail or non-rail, so that in fixing your rate base there would be certain assets included in the rail assets and certain assets excluded. Those excluded would not be entitled to a rate of return out of rail earnings.

THE CHAIRMAN: Well, would this segregation itself determine the excluded?

MR. SHEPARD: Yes, I would expect that it would.

THE CHAIRMAN: Very well then. Suppose you have this segregation and some things are excluded from rail accounting?

MR. SHEPARD: Yes.

THE CHAIRMAN: Then would you fix your rates, the freight rates, altogether independently of those other assets, as you call them, and the income derived therefrom?

MR. SHEPARD: Yes, subject to - -

THE CHAIRMAN: And would you let the rail requirements stand absolutely by themselves?

MR. SHEPARD: Yes, subject only to this, Mr. Chairman, that if the railways continue on a requirements basis, we would continue to urge, as we have in the past, that fixed charges, dividends and surplus, should be apportioned between rail and non-rail earnings, because fixed charges, dividends and surplus, are corporate obligations. They are not obligations exclusively of the rail side of the enterprise or the non-rail side of the enterprise.

THE CHAIRMAN: Who would do the allotting?

MR. SHEPARD: The Board under this amendment that we have suggested.

THE CHAIRMAN: Is that covered, do you think, by that sub-section (2) where you say the Board shall have full jurisdiction to determine the proper segregation?

MR. SHEPARD: Yes, sub-section (1) is designed in the first instance to have the Board ask the railways for what they consider to be a proper segregation.

then sub-section 2 is designed to enable the Board, having received the suggested segregation from the railways, to determine what they consider to be the proper segregation, which might or might not agree with the railways views.

THE CHAIRMAN: You mean that the Board may consider that certain assets or sources of income are properly rail, whereas the railways think they are not properly rail?

MR. SHEPARD: Yes.

THE CHAIRMAN: And vice versa?

MR. SHEPARD: Yes.

COMMISSIONER ANGUS: Would the segregation have to be uniform for all railways?

MR. SHEPARD: Yes, I would think so, Dr. Angus.

THE CHAIRMAN: Of course, they have not all the same assets or the same kind of assets.

MR. SHEPARD: No. That is quite right.

THE CHAIRMAN: When you say assets, you mean anything they own?

MR. SHEPARD: Yes.

THE CHAIRMAN: In the case of the Canadian Pacific Railway, do you mean their interest in Consolidated Smelters?

MR. SHEPARD: Yes.

THE CHAIRMAN: That that might be taken into consideration by the Board and have the effect perhaps of lowering their freight rates?

MR. SHEPARD: We would never argue that the C.P.R. holdings in Smelters should constitute a part of the rail enterprise.

THE CHAIRMAN: What is the object of ^{giving} the Board power to consider it then?

MR. SHEPARD: It would be considered by the Board only as an asset, so that the Board would determine whether or not that was a rail asset.

THE CHAIRMAN: That is what I say. I suppose you say then if you were arguing, you would ask the Board not to consider it as a rail asset?

MR. SHEPARD: That has been our position up to now.

THE CHAIRMAN: That it is not a rail asset?

MR. SHEPARD: Yes.

THE CHAIRMAN: And should not be considered either for or against freight rates?

MR. SHEPARD: Except in the matter of the total requirements of the corporation for dividends, fixed charges and surplus; other income and the assets earning that other income should bear a proper share, in our submission, of those requirements.

THE CHAIRMAN: For those particular requirements?

MR. SHEPARD: Yes.

THE CHAIRMAN: Dividends and what else?

MR. SHEPARD: Fixed charges, dividends and surplus.

THE CHAIRMAN: Fixed charges, dividends and surplus, those three requirements. Those should be met by reference not only to rail revenue but to all other revenue as well?

MR. SHEPARD: Yes; on the basis that those are corporate requirements in any corporation.

THE CHAIRMAN: All right.

MR. SHEPARD: Going back now to page 38:

Manitoba has suggested that the Railway Act be amended by adding thereto Section 325C, the gist of which is to require the segregation of assets between rail and non-rail and the income derived from each class of asset.

THE CHAIRMAN: Pardon me, but where are you reading from?

MR. SHEPARD: The top of page 38, sir.

THE CHAIRMAN: Oh, yes.

MR. SHEPARD: Manitoba fully supports the views expressed in regard to the foregoing matters by Mr. Cooper on behalf of the C.N.R.

It should be emphasized that Manitoba's submissions on these matters are not an end in themselves. The desired end or result is to have information made available to enable the Board of Transport Commissioners to police effectively the railways in order to safeguard the public interest.

Then turning next to the subject of maintenance, while paragraph 2 (d) of P.C. 6033 --

COMMISSIONER ANGUS: Is the implication of this paragraph on segregation, Mr. Shepard, that the rail income of the railway should pay whatever is considered adequate dividends on its rail investment?

MR. SHEPARD: Yes.

THE CHAIRMAN: On its rail investment?

MR. SHEPARD: Yes.

THE CHAIRMAN: That would be the measure, would it, of freight rates - adequate dividends to the railways on their investment?

MR. SHEPARD: I do not think I would go quite that far.

THE CHAIRMAN: That is what you just said.

MR. SHEPARD: Perhaps I should reconsider what I have just said, if that is what it amounts to. I do not think that the railways or rather that the C.P.R. - because the C.P.R. is the only railway with common stock - should take the attitude that they are entitled to earn a ^{rate of,} $\frac{1}{2}$ say, 5% dividend out of rail earnings ad infinitum. If the economic worth of the rail enterprise becomes less because of competitive factors, it would seem to me that, as a general principle of all corporations, the risk capital by its very name, in that corporation must take the risk of the railways becoming a

declining segment in the transportation economy and would therefore only be entitled to earn a smaller return.

THE CHAIRMAN: That is to say, the risk capital would be the measure instead of the historical investment. Is that it?

MR. SHEPARD: No, sir. I thought that I was answering your question as to whether the C.P.R. should always earn a fixed dividend on its common stock out of its rail earnings.

THE CHAIRMAN: No. I think the question was whether the freight rates should be set with a view to allowing the C.P.R. to earn a proper return on its investment. I think you said yes.

MR. SHEPARD: Yes, on the assets so used.

THE CHAIRMAN: On its investment?

MR. SHEPARD: Yes.

THE CHAIRMAN: On what investment?

MR. SHEPARD: On its investment.

THE CHAIRMAN: How would you determine the value of its investment?

MR. SHEPARD: I think the starting point would be its book value, and I think from there you would move into an investigation to make sure that there are assets used and useful in the enterprise behind the book values shown in the books. Having established a value, a proper return, which is I think the phrase you used, a proper rate of return on that value would necessarily take into account the factors that I just mentioned which might result-- if the plant was unable, because of competitive factors, to earn its present level of returns or its past level of returns; in a proper rate of return on that rate base, which is what it would be, that might be substantially less than it is envisaged to be by the C.P.R. today.

COMMISSIONER ANGUS: You are really modifying there this principle of historic cost less depreciation?

MR. SHEPARD: No I would not depart from that.

THE CHAIRMAN: I thought you just said that present day values may be very different from former day values on account of competitive media of transportation that have come along.

MR. SHEPARD: Not present day values, Mr. Chairman, but the ability to earn a return on an established valuation.

THE CHAIRMAN: Does not ability to earn determine the value?

MR. SHEPARD: I suppose it does, yes; but the concept of value I had in mind was an established asset value of property used and useful in the enterprise; and one method of doing that is to take the book value, investigate the figures in the book value, confirm or alter them accordingly after investigation, and that becomes your rate base. My point was that the rate of return to be allowed on that rate base would be dependent on the general position of the railways in the Canadian transport economy.

THE CHAIRMAN: Having regard to competitors?

MR. SHEPARD: Yes.

COMMISSIONER ANGUS: Does that not raise a difficulty in this way, that the ability of the railway to earn depends on the rates set by the Board of Transport Commissioners, and you want to make the rates set by the Board of Transport Commissioners depend on the ability of the railway to earn?

MR. SHEPARD: Yes.

THE CHAIRMAN: Is that not a circular argument, Mr. Shepard?

MR. SHEPARD: No, I do not believe it is, Dr. Angus. We are not denying the right of the railways to earn a fair return under existing conditions.

THE CHAIRMAN: A fair return on what?

MR. SHEPARD: On the value that I have been discussing.

THE CHAIRMAN: The value?

MR. SHEPARD: Yes.

THE CHAIRMAN: You mean the present-day value?

MR. SHEPARD: I mean the value fixed in the manner I have been discussing with you, by a reference to the book value, the investigation of the book value and alteration possibly of the book value as a result of such investigation.

THE CHAIRMAN: Alteration, to bring it down to what? To bring it down to its present-day value?

MR. SHEPARD: It would bring it down to its present-day value of the assets used and useful in the railway enterprise, depreciated.

THE CHAIRMAN: Would that value necessarily mean what it might be sold for?

MR. SHEPARD: I do not believe I would go that far, because what it might be sold for is, I think, almost anybody's guess, Mr. Chairman. In my respectful submission, it would be a brave man or group of men who would buy a railway today in this country. It might have to go at a substantially lower price.

THE CHAIRMAN: On the other hand, would you go so far as to say that we must maintain railways?

MR. SHEPARD: Yes, I would.

THE CHAIRMAN: And that we must maintain the Canadian Pacific as a private enterprise railway?

MR. SHEPARD: That is our position today.

THE CHAIRMAN: That is your position.

MR. SHEPARD: But I am not suggesting that it would be our position if conditions changed in the future.

Mr. Shepard

THE CHAIRMAN: Nobody can tell what conditions would be if conditions changed.

COMMISSIONER ANGUS: Have you quite dealt with my point about the argument being circular, Mr. Shepard?

MR. SHEPARD: I think that what I tried to convey was this, Dr. Angus. We are not denying the right of the C.P.R. to earn a proper return on a properly established rate base, or to earn requirements properly fixed. But by using the word "properly" as often as I have in that description, it would necessarily have to take into account the earning capacity of the railway enterprise which, in my submission, is substantially less than it was say in the 1920's, or prior to the 1920's when it was still a monopoly.

COMMISSIONER ANGUS: The earning capacity, with a limit on the rate which the railway may charge, or without a limit?

MR. SHEPARD: I would even go so far as to say without a limit, because you get to the point of diminishing returns if you do not put a limit on rates; and if competition continues to erode into the railway revenues, it means that an increasingly small portion of the total revenues can be increased by rate increases, and eventually their earning capacity is very adversely affected if that concept is carried on indefinitely.

COMMISSIONER ANGUS: I do not think that the Canadian Pacific has ever claimed a right to a bigger rail income than the economic ceiling of rates would give it. I may be wrong there, but I think its only claim is that the legal ceiling should be advanced to give it, if necessary, the full economic scope.

(Page 21460 follows)

Mr. Shepard

MR. SHEPARD: This is a subject I deal with later in argument.

COMMISSIONER ANGUS: All right.

MR. SHEPARD: I might just say that it does seem to me that the C.P.R. in wanting to re-establish its credit position by restoring the price in the open market of its common stock to par or higher, is in effect seeking to place itself in a class by itself in the railway industry on this continent. As I understand it they are seeking to put up the freight rates to a point where their common stock will sell at par or higher, and if that is done it seems to me that they are hoping to get a return which, in view of the competitive pressures that they are under today, they are not entitled to earn.

MR. COMMISSIONER ANGUS: Well, doesn't that mean which they are quite unable to earn?

MR. SHEPARD: Quite unable to earn is perhaps a more accurate way of putting it.

COMMISSIONER ANGUS: But have they asked for more than the freedom to try?

MR. SHEPARD: Perhaps not. Shall I continue?

THE CHAIRMAN: Yes.

MR. SHEPARD:

Maintenance

While paragraph 2(d) of P.C. 6033 does not make specific reference to the subject of maintenance, it is considered appropriate to comment upon it at this time since it is a most substantial expense item and is therefore related to accounting and also since it is related to the matter of depreciation. (See evidence of Mr. Cooper Vol. 100, p. 18731). The matter of maintenance expenses is introduced into our argument here for two reasons, firstly, as an illustration of the

necessity of the Board of Transport Commissioners policing all railway expenses and, secondly, because it is so large an amount in the railway operating expenses.

This subject is dealt with our brief at page 89 (Volume 45, p. 8630), and is also the subject of comment in section 325A(3)(b) and 325A(4), which we looked at yesterday. They are on page 14.

THE CHAIRMAN: Pardon me, did you say page 14?

MR. SHEPARD: Page 14. Section 325A(3)(b) reads:

"The Board in determining any application under this section shall have due regard to all charges and expenses of the company, including maintenance charges."

The second amendment is 325A(4) which reads:

"In determining an application under this section it shall be the duty of the Board to make independent studies and investigations in respect to the financial and other affairs of the company for the purpose of safeguarding the interests of the public generally or any portion thereof."

I might comment that I quite appreciate that that amendment, as well as some of our other amendments, is quite within the powers of the Board to do today, but the reason the province of Manitoba considers it is necessary to have definitive sections included in the Act is that in the past the Board has not carried out its duties as we consider them to be as an administrative tribunal. We consider these sections are necessary to give the Board guidance and direction.

COMMISSIONER ANGUS: When you use under 325A(3)(b) the words "the company", and in paragraph (c) "the railway",

does that mean that the Board will do this in respect of all companies and all railways, or do you mean the applicant railways, or have you the Canadian Pacific Railway in mind?

MR. EVANS: The word "company" is defined in the Act.

MR. SHEPARD: We have in mind all applicant railways. Of course in drafting this we were conditioned to some extent by the past applications that we are most familiar with where the application has been made by the Railway Association, but the Canadian Pacific Railway because of its nature, being the only privately owned large railway in the country, has been the yardstick, and we have in mind particularly the necessary investigation of Canadian Pacific Railway operating expenses.

THE CHAIRMAN: In section 325A(1) you provide that the Board shall hear and determine an application by or on behalf of any party interested for an increase of tolls.

MR. SHEPARD: Yes.

THE CHAIRMAN: Would one railway apply alone for an increase of tolls?

MR. SHEPARD: They have not in the past but there is no reason why they might not in the future, Mr. Chairman.

THE CHAIRMAN: All right.

MR. SHEPARD: C.P.R. maintenance costs have trebled since 1939 -- an increase so large that it cannot be accounted for in our submission by increased traffic volume coupled with increased costs of labour and material. I might mention that on page 31 of the 1949 C.P.R. annual report is found the 1949 maintenance expenses of the railway, and they totalled something over \$156 million.

THE CHAIRMAN: You are referring to the Canadian Pacific report?

MR. SHEPARD: The Canadian Pacific annual report for 1949. On page 31 it shows maintenance of way and structures, \$70,872,355, and maintenance of equipment, \$75,653,176, so that they total something over \$156 million.

THE CHAIRMAN: Your comment on those figures is that they cannot be accounted for by increased traffic volume coupled with increased costs of labour and materials.

MR. SHEPARD: That is right.

THE CHAIRMAN: Do you suggest how they are otherwise accounted for?

MR. SHEPARD: Our position before the Board and before this Commission has been that because of this fact, applying our best thought to the matter -- it should be \$146 million in 1949 and not \$156 million.

THE CHAIRMAN: What is that?

MR. SHEPARD: I gave the figure of \$156 million. The total is \$146 million.

THE CHAIRMAN: \$146 million.

MR. SHEPARD: Yes, I was \$10 million out in my addition. Our position has been with regard to this matter of maintenance that it has increased so substantially over pre-war levels that the Board should investigate the level of maintenance expenses. In the next few pages of my argument I develop the past attitude of the Board on the matter, and what we consider should be their attitude.

THE CHAIRMAN: What is the past attitude of the Board, to accept the figures given to them by the company?

MR. SHEPARD: With one exception which I have

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set out in the argument. On the 8% interim award the Chief Commissioner gave as one ground for the postponing of his final determination of the case the necessity for investigating and studying the level of maintenance expenses. In the 16% determination that was not further commented upon.

THE CHAIRMAN: What happened to that decision in the 8% case?

MR. SHEPARD: That was the decision which was appealed by the C.P.R. to the Supreme Court and on two questions of law both of which were answered in the affirmative by the Supreme Court, and which resulted in a reference back to the Board of Transport Commissioners for final determination. The Supreme Court held that their interim award was bad in that the grounds of postponement of final determination of the case were not proper.

THE CHAIRMAN: Does that mean they were to proceed no further in ascertaining what the real maintenance was, and to accept the figures as they had them, or that they were to proceed by themselves to find out?

MR. SHEPARD: They did not make any determination of that alternative that you have put to me. They simply said that the railway had made out a case and they must be granted relief on the basis of the case made.

THE CHAIRMAN: Perhaps if we had the decision --

MR. SHEPARD: I come to it.

THE CHAIRMAN: Oh, you are coming to it. All right.

MR. SHEPARD: Yes. Manitoba considers it vital that the Board of Transport Commissioners make independent checks and studies on this subject and that it should not simply accept unchallenged the

evidence of the Railways in this regard. It is for this reason that the amendments mentioned have been suggested. A reading of the relevant portions of the three recent judgments of the Board shows that it has not in the past fulfilled what the Provinces contend to be its duty with reference to the matter of maintenance.

A reading of the relevant portions of the 21% judgment, dated March 30th, 1948, commencing at p. 28 indicates that the Board made no independent studies whatever with reference to the matter of maintenance. For example, at page 29 the Chief Commissioner states:

"The question arises as to how long deferred maintenance may appropriately continue to be deferred. This question I am unable to answer on what is before us."

It is Manitoba's submission that no judgment of an administrative tribunal should contain any such statement. If the tribunal has not sufficient material before it to make a determination of any matter relevant, it is its duty to make an independent investigation and to demand from the railways the necessary information to enable it to reach a proper conclusion. In the 8% interim judgment dated September 29, 1949, the Chief Commissioner in the Majority Judgment deals with the matter of maintenance costs and deferred maintenance beginning at the bottom of page 11. He recognizes the necessity for further study by the Board and such further study was one reason for postponing the final determination of that case.

This matter is dealt with in the final judgment -- it is perhaps now the semi-final judgment --

in the 20% Application dated March 1st, 1950, under the heading of "Level of Maintenance", commencing at page 9 of that Judgment. No reference is made to the statement in the Interim Judgment that further study would be required by the Board and the reader of the 16% Judgment is left with the definite impression that the Board is of the view that since the respondent Provinces were unable to adduce positive evidence, proving that some elements of the maintenance expenses should have been disallowed for rate-making purposes, that the railway evidence must be accepted.

It is because of this latter attitude that Manitoba urges the amendment already discussed with reference to the matter of maintenance.

THE CHAIRMAN: Does this give us the full story? What did the Supreme Court say on that very question? You told us the Board said they could not determine this matter of maintenance until they got further information from the railways.

MR. SHEPARD: Yes -- no, I am wrong there. It was not further information from the railways. It was until they had made further studies.

THE CHAIRMAN: Who?

MR. SHEPARD: The Board.

THE CHAIRMAN: What did the Court say about that?

MR. SHEPARD: I will have to look that up. I might read first, Mr. Chairman, an excerpt from the 8% Interim Judgment which is found on page 11 at the bottom of the page.

THE CHAIRMAN: The Court's judgment, or the Board's?

MR. SHEPARD: This is the Board's judgment. I shall read that first, if I may, and then give you what

the Supreme Court said.

"On the hearing of this application the applicants restated and brought up to date their evidence and exhibits with reference to maintenance costs. I think that these maintenance costs will require further study before any decision can be given, even assuming that the requirements of the Canadian Pacific Railway are to be accepted as the yardstick for a further increase in freight rates."

He says they require further study.

THE CHAIRMAN: That means that in the case of the Chairman at least the railway had not brought forward sufficient evidence to justify the increase that they were asking for.

(Page 21470 follows)

MR. SHEPARD: Yes, my only point in discussing this matter at all, is that in Manitoba's view,, in which we are supported by the other provinces, if the C.P.R. had not brought forward what they consider to be enough evidence, the C.P.R. brought forward, in fairness to them, all the evidence that the C.P.R. felt necessary; but if the administrative tribunal required further information, it was their duty, as an administrative tribunal, either to conduct studies of their own or to obtain that information.

THE CHAIRMAN: When you say "obtain"it - -

MR. SHEPARD: From the railways.

THE CHAIRMAN: Well, that is just what they said they intended should be done before they would give a judgment. Isn't that what they said?

MR. SHEPARD: That is what they said.

THE CHAIRMAN: What did the Court say then, please?

MR. SHEPARD: Then the Court in dealing with the matter of maintenance says this, and this is the Judgment of Mr. Justice Kellock in the case which is reported in 1950 S.C.R. page 25, and I am reading from page 31:-

"The third matter under this head..."

(And he is referring now to the matter of postponement)

"....was the question of maintenance costs and 'deferred maintenance'. As to these the Judgment says that --

(Then, quoting from the Judgment)

'the question of proper maintenance costs as well as that of deferred maintenance will require further study by the Board in the light of additional information and accounting procedure which may flow from the recommendations of the Royal Commission.'

"From these references it is apparent that the postponement is until the General Freight Rates Inquiry (to be conducted by the Board itself), the report of the Royal Commission on Transportation, and probably (but perhaps not so clearly) the consideration by Parliament of that report, have all come to pass".

Now, he does not single out the Board's comment on maintenance for particular reference, but in that short paragraph I have just finished reading he couples it with the other matters that were considered by the Chief Commissioner as proper grounds for postponement when he made his interim award.

THE CHAIRMAN: Then, do you interpret that as meaning not that the Board might not have adjourned their hearing until they got further evidence from the railway as to maintenance, but - -

MR. SHEPARD: No, I don't think that either ourselves or the railways would have considered that to be a bad basis in law. It would not have a declining of jurisdiction by the Board if the only ground for an interim award was "we must study this one matter further". Then I think all parties would have said: "Now, as soon as that study is done, the Board must reach a final

decision.

THE CHAIRMAN: Then, are your proposed amendments intended to make it plain that the Board has such power, and not only has it, but will have the duty in the future?

MR. SHEPARD: That is the sole purpose of the amendment we have been discussing, Mr. Chairman.

THE CHAIRMAN: All right.

MR. SHEPARD: Now, the matter of "Accounting and Statistical Procedure Related to Rate Making".

The evidence of both Messrs. Jefferson and Liddy, it is submitted, if viewed broadly, carries with it the strong suggestion that the rate-making system is one based solely on experience and judgment and has been unchanged in any important aspect for many years while the costs of the C.P.R. incurred in general or in relation to specific types of traffic are either unknown, or if known are not considered during the process of rate making.

The C.P.R. attitude might be paraphrased thus: the rate-making system in the past has produced sufficient revenue to meet the operating expenses and therefore it should not be changed; if costs go up rates will have to be increased, and the increase should be applied primarily to the non-competitive traffic, unless the railways decide otherwise.

But the C.P.R. rate-making system evolved during a period when there was much less competition than there is today and competition will increase in the future with the result that a greater proportion of the total traffic will have to be carried at rates

reduced to meet the competition. Consequently, the railways' submission would place an ever-increasing burden on the long haul non-competitive traffic.

It is Manitoba's submission that the problem created by competition must be viewed realistically and cannot be solved by regulation of competing carriers. The solution lies rather in determining if possible what traffic can be carried at a profit by the railways. Traffic offered, which would if accepted be carried at a loss, should be refused, and indeed Mr. Jefferson in Vol. 79, p. 15757, said he would not knowingly carry traffic at a loss and if he knew a rate was non-compensatory he would forego the traffic. (C.P.R. Submission, Part I, p. 62).

The important thing obviously is whether it is possible to make a sufficiently detailed and accurate analysis of the sources of railway revenue and an acceptably accurate analysis of costs comparable to the revenue analysis. The C.P.R. witnesses have made it clear that in their opinion revenue and expenses cannot be properly broken down. (See evidence of Mr. Walker, Vol. 64, p. 13494). They have further made it clear by their attitude that railroading is so complex in its revenue and expense aspects that only specially trained railroad personnel are capable of understanding the problems.

That may seem like a very broad statement, Mr. Chairman, but I might refer the Commission to Volume 117, page 21133, where Mr. Armstrong said in giving evidence on C.N.-C.P. co-operation - -

THE CHAIRMAN: Which Mr. Armstrong?

MR. SHEPARD: Mr. Armstrong the second, I am not sure of his initials. He said this:-

"In my opinion no such outside body..."
(he was referring to the suggested tribunal that would enforce co-operation between the two railways)

"....could possibly get inside the brains of management and know the reason for management's conclusion".

And it is that attitude on the part of the C.P.R. that I had in mind in what I have just been saying.

In other words, leave the problem to C.P.R. management -- it knows best and it is doubtful if anyone else could understand it. On the other hand, Mr. Fairweather of the C.N.R. stated that the C.N.R. has developed an elaborate costing system over the years. (Vol. 110, p. 20159).

Unless the C.P.R. changes its attitude and makes every effort to conduct an intelligent self-examination of its accounting methods we make bold to predict, perhaps because of our ignorance, but in any event because of a deep-rooted sincere conviction, that their present problem due to competition will be aggravated rather than solved.

If the best available outside experts on cost and revenue analysis applied themselves to this problem, we are confident that a system could be worked out whereby the railways would know in considerable detail the sources of rail revenue and the cost of earning that revenue. With this knowledge at their disposal the railways would then be in a position to consider traffic as offered and forego that

for which costs would exceed revenue, leaving such traffic to their competitors, In our view this is a realistic approach to a solution to the problmm in a realistic manner.

COMMISSIONER ANGUS: Mr. Shepard, are you suggesting that the Canadian National Railways on the one hand and the Canadian Pacific on the other have different policies in relation to competitive rates?

MR. SHEPARD: In relation to testing the compensatory nature of those rates, I can only go by the evidence and the impression it made on me, that was presented before this Commission, and I would answer your question by saying "yes".

COMMISSIONER ANGUS: That they have different policies in fact as well as different opinions?

MR. SHEPARD: I certainly gathered a different impression from the evidence of Mr. Fairweather dealing with their method of costing in the C.N.R.

COMMISSIONER ANGUS: No, but did they give any practical effect to that, or are you suggesting that the Canadian National Railways have knowledge which they do not use?

(Page 21477 follows)

MR SHEPARD: No, no, I am not suggesting that at all, Dr. Angus. I think that they do. I think that the way I would interpret the evidence of the C.N.R. is that they use their costing system to determine whether rates are compensatory or not. My criticism of the C.P.R. in this section of the argument is that they have not got such a costing system, and I gathered from the evidence of Mr. Jefferson -- and I go on to develop it here further -- that he applied certain tests which in Mr. Fairweather's evidence he did not consider to be accurate or complete enough, and that, having applied those tests, he decided that the rate was compensatory.

COMMISSIONER ANGUS: My question is really this: As a matter of fact are the competitive rates charged by the Canadian National Railway higher, as that would suggest, than the competitive rates charged by the Canadian Pacific?

MR SHEPARD: No. The rates, of course, are the same for both railways.

COMMISSIONER ANGUS: In that case the Canadian Pacific would be getting the benefit of the studies of the Canadian National, if the level was based on those studies.

MR SHEPARD: Well, I doubt very much whether that would be the practical effect, because -- although I do not know; this is more or less a discussion in a vacuum as far as I am concerned, but the C.P.R. would not always be the last person or the last of the two railways to fix a competitive rate, and they should have the---

THE CHAIRMAN: Q. The last? Is that what you said?

MR SHEPARD: Yes. In other words, I am speaking now of a competitive rate being fixed by either the C.N.R.

or the C.P.R. Dr. Angus' question---

THE CHAIRMAN: That is, do they fix their competitive rates independently of each other?

MR SHEPARD: I have understood that they do, yes.

THE CHAIRMAN: Between given points.

MR SHEPARD: But once the rate is fixed the other railway would charge the same rate.

THE CHAIRMAN: That is, the lower rate.

MR SHEPARD: They would charge the new competitive rate fixed.

THE CHAIRMAN: Fixed by whom?

MR SHEPARD: Fixed by whatever railway fixed it.

THE CHAIRMAN: You mean the lower?

MR SHEPARD: Yes.

THE CHAIRMAN: Suppose they both had competitive rates, do they start a rate competition?

MR SHEPARD: No, that is not my understanding, Mr. Chairman. Their competitive rates are not competitive as between the two railways.

THE CHAIRMAN: They get together and agree on what they should make as a rate to compete with the trucks; is that it?

MR SHEPARD: I do not believe I am the right person to ask just how they fix competitive rates among themselves, Mr. Chairman.

THE CHAIRMAN: Does it always turn out that in a given area the two railways have exactly the same competitive rates?

MR SHEPARD: That is my understanding, very definitely.

COMMISSIONER ANGUS: Did you ask Mr. Fairweather, or did anyone ask him, how his studies actually affected competitive rates charged by the railway?

THE CHAIRMAN: You are saying they approach this problem from different points of view; how can they arrive at the same rate, then?

MR SHEPARD: This section of the argument is pointed to the fact that from the C.P.R. evidence it is apparent to me at least that the C.P.R. fixes its rates on experience and judgment, and I am not critical of that as far as it goes. I think they are bound to use experience and judgment in fixing rates. But what I do say is that any business---

THE CHAIRMAN: You are talking now of competitive rates, are you?

MR SHEPARD: I am talking of the fixing of any rates. I would say this---

THE CHAIRMAN: Any rates below the ceiling?

MR SHEPARD: Yes, sir.

THE CHAIRMAN: Below the ceiling.

MR SHEPARD: Yes, sir. I would say that any business -- take as an illustration or an example a corporation the size of United States Steel Corporation, which has many, many aspects to its operation. I am quite sure that that business knows the costs that it incurs in producing any one of the many articles that it produces, and my criticism is directed to the failure of the C.P.R. to make an effort to determine those costs.

Mr. Walker in his evidence said that there were too many arbitrary factors. Now, my advice from technical people is that a satisfactory cost analysis could be made, and it would be effective, in my submission, for the C.P.R. to have that made, so that in addition to applying their judgment and experience to the problem of fixing rates they would be able to have reference to their cost analysis system, and would forego traffic which was going to cost

them more to haul than there was revenue in sight for that traffic.

THE CHAIRMAN: You have no fault to find with the method pursued in these matters by the Canadian National Railways, have you?

MR SHEPARD: I would say---

THE CHAIRMAN: You seem not to, by what you say about Mr. Fairweather.

MR SHEPARD: That is right, yes, sir.

THE CHAIRMAN: Well, mustn't they arrive at the same rate?

MR SHEPARD: Well, that was the point I was discussing with Dr. Angus previously, sir. I do not know enough about how they arrive at the rates to perhaps be competent to answer that question, but I would say offhand, and perhaps---

THE CHAIRMAN: Could you have this situation, where between the two railways, over the same area, between the same points, one would have to say, the C.P.R. would have to say, "We must abandon that, we cannot enter into this competition because it would not pay us," and let the C.N.R. take it, because in their case it would pay them? Have you in mind any such conclusion being arrived at?

MR SHEPARD: No, I have not.

COMMISSIONER ANGUS: May I put my question a little differently, in this way: Did Mr. Fairweather suggest any dissatisfaction with the level of competitive rates as a result of his studies? Did he suggest that those rates had been made unnecessarily low, for instance?

MR SHEPARD: No, I do not think that he did; but my point is not, Dr. Angus, so much what the levels of competitive rates are today, but if some of those rates are actually costing the railways money, they could effect

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an economy by foregoing that traffic, and unless they know their costs they cannot tell whether or not they are losing money.

COMMISSIONER ANGUS: No, but apparently Mr. Fairweather did know their costs, or said that he did, and was the result that he felt any dissatisfaction?

MR SHEPARD: He did not express any, no.

COMMISSIONER ANGUS: Was he asked that?

THE CHAIRMAN: Does it mean that in certain cases one of the railways would remain in the field and the other would get out?

MR SHEPARD: I would not expect it to mean that, sir, but I would prefer to have that question answered by the railways.

THE CHAIRMAN: Well, I was wondering what you have in mind, you see.

We will adjourn for a few minutes.

(Recess)

MR SHEPARD: I think, if I may continue, Mr. Chairman, I was at the middle of page 43:

When the net revenue position of a railway is unsatisfactory there may be many causes for the condition.

THE CHAIRMAN: What do you mean by unsatisfactory? When there is no surplus, or what?

MR SHEPARD: When there is not sufficient revenue to pay fixed charges, dividends and a surplus.

THE CHAIRMAN: Insufficient, then.

MR SHEPARD: Yes.

It is submitted that an important cause for the C.P.R. position today is its failure to analyze revenues and costs to determine what traffic is losing money. Improvement

in that position -- that is, their net revenue position -- may be attained by increased traffic, increased efficiency, increased rates or decreased costs. Costs may be decreased by higher productivity of labour or by foregoing traffic if it is non-compensatory.

THE CHAIRMAN: Pardon me. Are you pointing out to the C.P.R. what they ought to do today to better their position? Is that what you mean?

MR SHEPARD: I am not pointing out to the C.P.R.---

THE CHAIRMAN: For instance, you say "increased traffic" -- "Improvement in that position may be attained by increased traffic". Who would see to that?

MR SHEPARD: Well, I am not suggesting. That is simply a statement, Mr. Chairman, of how the net position of any railway can be improved. It is a general statement of the factors that might contribute to the improvement of the net position. I mentioned earlier this morning, I think, in answering Dr. Angus, that one factor would be the general development of Canada, which would result in more traffic being offered to all the carriers, and that would result in increased traffic to the C.P.R., of course.

THE CHAIRMAN: Then you say "an important cause for the C.P.R. position" -- do you mean unfavourable position today?

MR SHEPARD: Yes, sir.

THE CHAIRMAN: " . . . is its failure to analyze revenues and costs to determine what traffic is losing money."

MR SHEPARD: That is one of our submissions, yes.

THE CHAIRMAN: You arrive at that conclusion after hearing the evidence of the C.P.R. officials themselves

MR SHEPARD: Yes, Mr. Chairman.

We are satisfied that some classes of C.P.R. traffic are today being carried at a loss but since no C.P.R. witness could give definite figures it is impossible without a proper revenue and cost analysis to determine what is the non-compensatory traffic in order to eliminate it.

THE CHAIRMAN: What evidence have you, then, to say that you are satisfied that certain traffic is carried at a loss?

MR SHEPARD: I go on to develop that, Mr. Chairman.

THE CHAIRMAN: All right.

MR SHEPARD: In fact I think I covered that yesterday. I am not sure what section of the argument it is. Yes, it was yesterday, Mr. Chairman. I did mention seven classes of traffic, three of which the C.P.R. had stated they considered to be compensatory, and the other four classes of traffic, in my cross-examination of Mr. Jefferson, they had not said whether it was compensatory or not.

THE CHAIRMAN: Haven't they said broadly that all rates fixed by themselves are compensatory?

MR SHEPARD: I think perhaps they have, but I remember at the time Mr. Jefferson was on the stand, Mr. Chairman, Dr. Angus pointed to the fact that these three classes of traffic which were considered by the C.P.R. to be compensatory -- and, as I recall it, they were agreed charge traffic, and I do not recall the other two at the moment---

THE CHAIRMAN: Well, competitive rates.

MR SHEPARD: Yes, competitive rates was another, and I have forgotten the third, Mr. Chairman. Mr. Jefferson's evidence was to the effect that the per car mile earnings plus other tests that he suggested, on those classes of traffic, were above the system average per car mile earning, and therefore they were necessarily compensatory. Now, if

those three classes of traffic constituted any substantial section of the total railway traffic, it stands to reason that some other classes must be below the system average, and therefore by the C.P.R. tests non-compensatory. That is the basis of my submission now.

THE CHAIRMAN: You say on page 44 you revert to something already dealt with; on what other page is it?

MR SHEPARD: I am sorry, Mr. Chairman; I see that it is just the very next sentence on page 44.

COMMISSIONER ANGUS: Is that a logical argument, Mr. Shepard? If you say that something is obviously compensatory because it is above the average, you are not saying that everything below the average is non-compensatory?

MR SHEPARD: It would not necessarily follow, no, but our point is that there should be a cost analysis to determine whether it is compensatory if it is below the system average. I quite agree with you, that the fact that it is simply below an average does not mean that they are losing money on it, because the average itself might be above the compensatory level.

The C.P.R. evidence attempted to show that competitive, trans-continental and agreed charge traffic was compensatory. This was done through Mr. Jefferson who indicated that because car mile earnings on these classes of traffic were above the system average, they were compensatory. (Vol. 67, p.13961).

THE CHAIRMAN: Is the system average in itself compensatory?

MR SHEPARD: Well, the way to look at that, Mr. Chairman, would be to take the net revenue position of the railway enterprise, and if that net revenue position is sufficient to meet the operating expenses -- if the total revenues, I should say, are sufficient to meet the operating

expenses of the rail enterprise and leave sufficient over to pay the requirements of the railways as determined by the Board, then all rates would be compensatory, taking them all as one.

THE CHAIRMAN: Go on, please.

MR SHEPARD: Manitoba does not consider that this evidence in any way proves the compensatory nature of the traffic involved.

The evidence gave no attention whatever to any question as to whether car mile costs were above or below the system average -- that is, car mile costs as opposed to car mile earnings. Manitoba's view in this regard is supported by the evidence of Mr. Fairweather for the C.N.R. (Vol. 110, pp.20171 and 20173).

COMMISSIONER ANGUS: Did you agree with Mr. Fairweather's argument that all truck competitive rates must be compensatory, because they apply to fairly high-grade things and therefore must be above the system average?

MR SHEPARD: No, I am not in a position to agree or disagree with that evidence, Dr. Angus.

THE CHAIRMAN: Pardon me a moment. You said just now, car mile costs as opposed to what?

MR SHEPARD: Car mile earnings.

I might refer to that evidence of Mr. Fairweather, in volume 110, at page 20173; he says this:

" . . . generalized analyses based upon system averages and things of that character, which are generally what is available at the present time to people outside the railway, are a very inadequate approach to cost accounting of railway performance."

The C.P.R. has made no study of other classes of traffic. In our view it is vital to the survival of

the C.P.R. that a complete analysis be made. If passenger traffic is losing say 28 million dollars per year (Exhibit 180) and L.C.L. traffic is losing an additional substantial amount per year, a proper analysis would reveal methods of reducing these losses if not eliminating them entirely. The obvious benefit to the C.P.R. translated into millions of dollars of reduction in costs and thus to improvement in their net earnings should in itself be a sufficient incentive to the C.P.R. to adopt such a policy. If it is not sufficient, and the attitude of the C.P.R. today would indicate that it is not, because they seem content with their past system, then it is respectfully urged that the Board of Transport Commissioners be required by legislation to direct the railways to undertake revenue and cost analyses and that the railways be required to forego traffic that is non-compensatory. (See suggested Sections 325B(2) and (3)).

THE CHAIRMAN: You see, you put them together. You would seem to assume that both railways would necessarily be found deficient and therefore should abandon the field, but that is not the case.

MR SHEPARD: No, it might not necessarily be the case. I think perhaps, Mr. Chairman, we discussed before the adjournment a few moments ago this question of who sets the competitive rates, and would not the C.P.R. have access to cost studies of the C.N.R. My understanding is that a good portion of competitive traffic would be competitive only with one railway as against say truck, and therefore that railway would fix its own competitive rate to meet the truck competition that it had to face.

THE CHAIRMAN: Take, for instance, rates on freight between Montreal and Toronto, where there is truck competition; do you mean to say that an examination

of the finances of both companies might show that , while the C.N.R. can afford to remain in that competition, the C.P.R. cannot, and they should abandon it and let---

MR SHEPARD: No, I am not suggesting that, Mr. Chairman.

THE CHAIRMAN: That is just the point. In a case of that sort the competitive rates must be the same on both railways.

MR SHEPARD: Yes.

THE CHAIRMAN: Well, what are you going to do about it? What would all this investigation lead to? That is, if you must apply the results equally to both railways anyhow, what would all this lead to? Separate accounts being taken of their capacity to run at these rates?

MR SHEPARD: Well, up till now, Mr. Chairman---

THE CHAIRMAN: Unless by a remarkable coincidence you would be almost bound to find out that it would benefit one company more than the other.

MR SHEPARD: Yes. Well, our position---

THE CHAIRMAN: What are you going to do about it?

MR SHEPARD: Our position as at today, Mr. Chairman, is that the C.P.R. should continue to be taken as the yardstick for rate-making.

THE CHAIRMAN: Then in that case between Montreal and Toronto, if you apply the C.P.R.'s capacity to compete as the measure, and you find that it cannot compete without losing, then both railways abandon the traffic to the trucks?

MR SHEPARD: Well, if that situation should turn out to be the fact, I would think that I would have to say yes.

COMMISSIONER ANGUS: Mr. Shepard, you really

raise just now the exact question I was interested in. You said that there were some cases in which the Canadian National Railways is competitive with trucks but not with the Canadian Pacific Railway.

MR. SHEPARD: Yes.

COMMISSIONER ANGUS: And other cases where the Canadian Pacific Railway is competitive with trucks but not with the Canadian National Railways.

MR. SHEPARD: Yes.

COMMISSIONER ANGUS: Now, what I really asked you was this: in such cases do you detect a difference between the policies of the two railways in setting competitive rates?

MR. SHEPARD: Well, on the basis of the evidence as I read it of the two railways, my answer is yes.

COMMISSIONER ANGUS: The evidence as to method; but the question is, do the rates themselves show a difference in policy?

MR. SHEPARD: I could not answer that question. The method of fixing the rate or determining its compensatory nature is really what I am directing myself to at the moment, and I would say that there is a difference in approach based on my reading of the evidence.

THE CHAIRMAN: Do you say that one method of approach is better than the other, by experience in these different areas?

MR. SHEPARD: Well, our submission, Mr. Chairman, is that experience and judgment certainly are vital factors in fixing these rates.

THE CHAIRMAN: That is, the C.P.R.?

MR. SHEPARD: That is, the C.P.R., and I think the C.N.R. as well. They do not disregard those two factors in fixing rates. But I say that in addition to

that, as in any business of any size, there should be a costing system --

THE CHAIRMAN: You are not asked what system there should be: you are asked as to actual experience in cases where the C.N.R. is the only competitor with trucks and in cases where the C.P.R. is the only competitor with trucks. Do you find any difference in the actual working out of the rates?

MR. SHEPARD: Well, I would say this in answer to that, Mr. Chairman, that the competitive rate fixed under those circumstances is fixed to meet competition by trucks.

THE CHAIRMAN: Well, of course, that is why it is called competitive.

MR. SHEPARD: Yes. Now, that being so, the level of that rate itself is not one that is worked out by experience or anything else. They find out what the trucks are charging. That rate, if the railway is to carry the traffic, must be met. Having determined what that rate is, my point is that they should have a system by which they can find out with reasonable accuracy whether they are going to make money or lose money on that rate.

THE CHAIRMAN: But you cannot tell us whether in these different areas the one railway is in a more satisfactory position than the other?

MR. SHEPARD: No, I cannot tell you that, my lord.

COMMISSIONER ANGUS: You cannot say whether, for instance, the Canadian National Railways, acting on Mr. Fairweather's calculations, foregoes traffic --

MR. SHEPARD: No.

COMMISSIONER ANGUS: -- in circumstances in which the Canadian Pacific Railway, acting on its principles, accepts it?

MR. SHEPARD: No, I cannot. I cannot point to an illustration of where that has happened at all.

Then the next subject is C.N.-C.P. co-operation. I might just give a reference first, in Volume 116, to pages 21023 and 21024. I did make a statement before the Commission just the other day as to Manitoba's approach to this matter, and it is covered in the next couple of pages, but I thought I should have the reference to the transcript on the record.

THE CHAIRMAN: What is your approach?

MR. SHEPARD: Well, it is covered, Mr. Chairman, I might point out, in the next two pages of my argument.

The next matter to which we wish to direct the Commission's attention is referred to in paragraph 6 of Mr. Covert's memorandum and deals with paragraph 2(e) of P.C. 6033 which reads as follows:

"Review and report on the results achieved under the Canadian National - Canadian Pacific Act, 1933 and amendments thereto, making such recommendations as the present situation warrants."

In Manitoba's view the weakness of the co-operation portion, being Part 2 of the C.N. - C.P. Act is that it is not of a mandatory nature.

THE CHAIRMAN: Not of a mandatory nature? Does it not direct them to do certain things?

MR. SHEPARD: I am just going to deal with that, Mr. Chairman, by quoting the actual wording in the section, the relevant section.

THE CHAIRMAN: It is not the Transport Act.

MR. SHEPARD: It is the C.N. - C.P. Act, Mr. Chairman.

Section 16 of that Act directs the Canadian

National and the Canadian Pacific "to attempt forthwith to agree and to continuously endeavour to agree . . . upon such co-operative measures, plans and arrangements as are fair and reasonable" It is obvious from this wording that if the two railways simply state that they have attempted to agree they have satisfied the responsibility placed upon them by the Act.

It is because of the indefiniteness of this legislation that Manitoba has suggested that the Railway Act be amended by adding Section 325A(3)(c) --

THE CHAIRMAN: Where is that to be found?

Page 14?

MR. SHEPARD: Page 14, Mr. Chairman:

"The Board in determining any application under this section shall have due regard to -
(c) Whether or not the railway is operated efficiently and with due regard to any savings which have been, or should have been effected, including savings under the Canadian National-Canadian Pacific Act."

THE CHAIRMAN: You have the words "should have been effected".

MR. SHEPARD: Yes. I think perhaps if I cover this section in my argument, Mr. Chairman, our meaning will become clear.

It is because of the indefiniteness of this legislation that Manitoba has suggested that the Railway Act be amended by adding Section 325A(3)(c) which would require the Board of Transport Commissioners, in determining any general increase application, to have due regard to whether or not any savings have been, or should have been, effected including savings under the C.N.-C.P. Act.

In the Majority Judgment of the 21% case dated March 30, 1948, the Chief Commissioner stated that the C.N.-C.P. Act does not confer upon the Board any duty or authority to require the Railway to study and undertake co-operative measures with a view to effecting economies, or to review and investigate what measures they have taken, or might have taken, under such Act.

In the Majority Judgment on the 8% Interim Award dated September 20, 1949, the Chief Commissioner at page 11 states: "This Board is not empowered to consider what degree of co-operation, if any, has been achieved by virtue of that Act." Without subscribing to the provinces' contentions the Chief Commissioner expressed great sympathy with what the provinces urged but pointed out that at the present time it was beyond the Board's jurisdiction to inquire into that question.

In the 16% judgment dated March 1, 1950, the Assistant Chief Commissioner at page 8 confirms the previous position taken by the Board, namely that it had no jurisdiction in regard to the matter of possible savings or economies to be effected by co-operation between the two railways.

It is Manitoba's submission that the Board should be directed as suggested in Section 325A(3)(c) to consider the results which should have followed co-operation, whether such co-operation took place or not, and to take such results into account in determining financial need in any rate case.

COMMISSIONER ANGUS: Do you think, Mr. Shepard, that the rate case is the best time to do that, I mean assuming that the Board did have this jurisdiction?

MR. SHEPARD: I would say no to that question. What I would envisage, Dr. Angus, is not that the determination of a rate case should be delayed by a great lengthy investigation as to economies that might have been effected, but that if the Board is given the jurisdiction that we envisage under this suggested amendment they would then be placed in the position from day to day or from month to month or from year to year, whether there is a rate case on or not -- and we hope they will not be coming every year; there was a twenty-five year gap between the last group of rate cases and the present ones -- but the Board would be charged with the duty of constantly keeping alert to the possibilities of co-operation, and would have the duty of requiring the railways to give them information. The Board might themselves conduct studies, they might ask the railways to conduct studies, so that when a general rate case came about there should be available in the Board's files information as to economies, and it might be determined very simply by the Board saying, "We have kept in touch with this matter over the last five years or ten years, and we are satisfied that no economies could have been effected."

THE CHAIRMAN: Can we take it, then, that your attitude is that the railways are not effecting sufficient economies under this Act?

MR. SHEPARD: Our attitude is not that, sir. We do not know. Until the evidence was --

(Page 21495 follows)

THE CHAIRMAN: As I mentioned the other day, the purpose of this Act is to effect economies and to provide more remunerative operation to the railways.

MR. SHEPARD: Yes.

THE CHAIRMAN: It is the railways that this Act has in mind.

MR. SHEPARD: Yes.

THE CHAIRMAN: How to provide them with more money?

MR. SHEPARD: Yes.

THE CHAIRMAN: And very often that would have to mean at the expense of communities and shippers and so on.

MR. SHEPARD: Yes.

THE CHAIRMAN: And that is justified I think by the results that have taken place. But then when the railways endeavour to bring about economies, they are met with opposition immediately,--

MR. SHEPARD: Yes.

THE CHAIRMAN:--from the communities affected, such as towns, boards of trades, provincial governments.

MR. SHEPARD: Even provincial governments.

THE CHAIRMAN: They say, "Go and cooperate somewhere else, not here."

MR. SHEPARD: Yes.

THE CHAIRMAN: I want you to bear that in mind, that this Act is designed to be a means of allowing the railways to carry on less service in some place in order that they may be in a better position.

MR. SHEPARD: Yes.

THE CHAIRMAN: And also that they may conduct a more remunerative operation.

MR. SHEPARD: Yes.

THE CHAIRMAN: That is the purpose.

MR. SHEPARD: That is the purpose of the Act.

THE CHAIRMAN: ^{While} /no particular community wants to be asked to make a sacrifice or contribute to this economy, on the whole you would say that they must be able to show that at the end of the year they have effected economies in Canada somewhere?

MR. SHEPARD: No, not necessarily. All that we are interested in is to insure that the Board of Transport Commissioners --

THE CHAIRMAN: You say that the Board should ascertain where they ought to have accomplished economies and have failed to do so. Is that what you say?

MR. SHEPARD: What I say is this, Mr. Chairman. In our view the Board should be ^m empowered either to make studies of their own of cooperative measures that might come to their attention, that might be feasible, determine whether or not they are, or request ^{to present} the railways/ to them the results of studies that the railways may have made. Then the Board, acting as a sort of public defender, if you want to say that--

THE CHAIRMAN: Defender of whom?

MR. SHEPARD: Of the public.

THE CHAIRMAN: Of the public? What public?

MR. SHEPARD: The public who are paying the freight rates.

THE CHAIRMAN: Is that the same public which then locally opposes every attempt to economize by abandoning lines and so on?

MR. SHEPARD: It might be. I do not see that that is a criticism of the position I am taking, Mr. Chairman. Surely the public of the country, living in a small western town, is not going to be precluded from having a railway service just because the railways could save money by

abandoning that line. There must be some consideration of whether that community is going to be allowed to live. For instance, its grain has to get to market by train. I am not suggesting for one moment that the railways today could effect substantial economies, because I do not know. The provinces have not known right through. I am not criticising the railway's attitude towards this matter at all.

THE CHAIRMAN: No; but you would have the Board put in such a position where they could say to the railways, "You ought to have done this and ought to have done that ,--"

MR. SHEPARD: Yes.

THE CHAIRMAN:--'but you did not do that".

MR. SHEPARD: Yes.

THE CHAIRMAN: Then what would happen? Would the railways have to go out and do that?

MR. SHEPARD: No. They would not have to do that. I am not suggesting that the Board would do that.

THE CHAIRMAN: What would be the result?

MR. SHEPARD: The result would be this. Let us say that the C.P.R. comes in five years from now and asks for an increase in freight rates. The Board looks at the evidence submitted, and it shows a revenue deficiency, on the C.P.R. calculation, accepted on that happy day by the provinces: and let us suppose that that revenue deficiency is \$10 million. Then the Board has reference to its studies and the studies it has obtained from the railways in the matter of cooperation and it says, "You could have effected economies and we suggested that you should do that. "

THE CHAIRMAN: I know. But they must be specific. "You could have effected economies" to what extent and where?

MR. SHEPARD: I was just coming to that, Mr. Chairman. "You could have^{effected}/economies of, say, \$1 million

by pooling certain passenger service in this country. We suggested that two years ago. You have had time to do it, but you have not done it. We are going to deduct from your \$10 million revenue deficiency \$1 million and we will fix rates on what is left."

COMMISSIONER ANGUS: Mr. Shepard, if you want the Board to exercise some continuous supervision of that sort, have you really used the right language in this section? You say:

"The Board in determining any application under this Act shall have due regard to -"

Does not that seem to limit the Board?

MR. SHEPARD: I see your point, Dr. Angus. ^{I think} perhaps you are quite right. But we have, of course, in another amendment--I think it is sub-section 4 to the same section -- required the board to make studies; and also in another amendment have empowered the board to obtain information.

THE CHAIRMAN: That is true. Amendment (4) reads as follows:

"In determining an application under this section it shall be the duty of the Board to make independent studies ..."

MR. SHEPARD: I agree with you.

THE CHAIRMAN: That suggests something that is extremely dilatory.

MR. SHEPARD: That is too narrow. I would not envisage / what you started out with in your original question, that the disposition of a rate case should be postponed until a thorough investigation into possible economies had been effected; because I think that would be an impossible position to place the railways in.

THE CHAIRMAN: Would it not be almost an impossible position for the Board if they were to say something like this: "We find that you should have

abandoned three years ago a line from point A to point B, and although we have not had the opportunity of hearing the people who would have been effected by this proposed abandonment, had you proposed it, we are nevertheless sure that we should have sanctioned it.

MR. SHEPARD: No. I think that would be a most unreasonable attitude for the Board to take.

THE CHAIRMAN: Do you not think that the approach you are making to this Act is really a false approach? This is an Act that directs the companies to make economies and it is expected by the Act that somebody is going to suffer from it because they are immediately directed then to take care of the employees and apportion what is left fairly among them and so on.

MR. SHEPARD: Yes.

THE CHAIRMAN: How can you, on the one hand, when they, for instance, go into your province and wish to do something, say, "No, you must not do it here" and, on the other hand say, "If you do not do it, it must be taken into consideration against you in the long run when you apply for a rate increase"?

MR. SHEPARD: Surely, Mr. Chairman, you are not suggesting that the public in the different communities in this country are not going to have the opportunity to be heard as to that.

THE CHAIRMAN: I am not suggesting that. I am suggesting that they are given and that they have been receiving an opportunity.

MR. SHEPARD: Exactly.

THE CHAIRMAN: How can they come back and say, "While you heard us and did not allow the railways to effect this economy, you must nevertheless hold it against the

railways later on when they apply for an increase in freight rates"?

MR. SHEPARD: Under the circumstances that you have mentioned now, Mr. Chairman, I think this would be the result. The railways would make their application for, say, the abandonment of a line. It would be heard by the Board. Representations from the public could be heard. The Board would make a decision either to abandon or not to abandon.

THE CHAIRMAN: That is, in all cases?

MR. SHEPARD: In all cases. And that decision presumably is made on the merits of the presentation put up by the railways on the one hand and ^{by} the opposing people on the other. That decision having been made not to permit abandonment, surely it could never be taken into account against the railways.

THE CHAIRMAN: Then you would have the Board in this position, of ^{saying} /"You ought to^{have} applied to us to abandon a line somewhere and did not apply; therefore we must hold that against you now." Is that it?

MR. SHEPARD: I would not go that far.

THE CHAIRMAN: How far do you go? I really think that sight has been lost of the real purpose of this Act in this case, which is to provide the railways with a means of making more money by saving on the one hand and by more remunerative operation on the other hand.

MR. SHEPARD: Yes.

THE CHAIRMAN: That must be done - and I do not see how else it can be done - at the expense of some community, some class of shippers, some people who now perhaps have greater facilities than they really require.

MR. SHEPARD: I entirely agree. But my point is that if the matter is studied --

THE CHAIRMAN: If they are to be left free, and if you are going to some deciding body which will say, "Here, this must be done and that must be done" regardless of any opposition that may come up locally, - there is always going to be local opposition; you ^{simply} cannot get away from that, can you?

MR. SHEPARD: No; and I do not think that you can ignore it.

THE CHAIRMAN: I know. If you cannot ignore it, you must abide by decisions reached concerning it. How could the Board say, in the void, "You ought to have applied to us to effect a certain economy, say, in Nova Scotia, and you did not apply; therefore you did not effect the economy and now we must mark that against you"?

(Page 21501 follows)

MR. SHEPARD: I see no reason --

THE CHAIRMAN: How can you bring things around to that?

MR. SHEPARD: I see no reason with the duty that we are seeking to place on the Board in this matter why the Board, let us say, should not do just as you suggest. Suppose they make a study of a certain line somewhere, and they look into it. They may even get complaints from the local people, and they may find that there is alternative transportation available in the area. Then I do not see why the Board should not say to the railway, "If you apply here we will give you permission to abandon this line."

THE CHAIRMAN: If you apply we will give you permission?

MR. SHEPARD: Yes.

THE CHAIRMAN: Before they hear anybody locally?

MR. SHEPARD: I have already said they have obtained local information.

THE CHAIRMAN: They have consulted the locality?

MR. SHEPARD: Yes. If that should transpire and the railway should just sit back and do nothing they have not taken the Board's advice --

THE CHAIRMAN: Have you in mind some travelling department of the Board which would go to these various localities, hear what people have to say and then decide that the railways ought to do this or do that, lessen service or abandon service, and then come back and tell the railways.

MR. SHEPARD: I have not gone that far in my thinking.

THE CHAIRMAN: I am trying to find some method whereby what you say can be brought about. You have

just said where the Board ascertains that in a certain locality certain economies may be effected then the Board would say to the railways, "You ask us to give you permission and we will give it to you."

MR. SHEPARD: I would assume that situation would not normally arise. I think the railways are alive to where they want to effect economies. It is true there has been a hiatus of some years as a result of the war, and perhaps for other reasons, but if they can effect economies by abandonments I am sure they will come forward and apply for permission and then there will be a hearing.

THE CHAIRMAN: If you are sure they will come forward why then do you say they are not carrying out the Act properly?

MR. SHEPARD: I am not suggesting they are not.

THE CHAIRMAN: You must be since you say the Board should take into consideration what they ought to have done under the Act and what they failed to do.

MR. SHEPARD: The way I am putting it is that there should be some agency -- and I am suggesting that the Board is the proper agency -- which could act as a policeman, if you will.

THE CHAIRMAN: Of its own motion?

MR. SHEPARD: Of its own motion, with reference to this Act.

THE CHAIRMAN: Go around the country and point out where economies ought to be effected?

MR. SHEPARD: I am not sufficiently --

THE CHAIRMAN: This is the time for determination and specification. Just what do you want? That is why we are listening to you.

MR. SHEPARD: I am not sure that I can add a

great deal to what I have already put on the record on this particular subject.

THE CHAIRMAN: You say the Board should take into account what the railways ought to have done and have failed to do, do you not?

MR. SHEPARD: By that wording --

THE CHAIRMAN: Isn't that what you say?

MR. SHEPARD: Yes, but by that wording I do not want to leave the impression that Manitoba is saying that there are many things that the railways have not done. This is a power that we suggest the Board should have.

THE CHAIRMAN: For the future?

MR. SHEPARD: For the future.

THE CHAIRMAN: It is from that point of view that I am questioning you. Are you not saying that for the future the Board should be put in this position, that it can tell the railways, "You ought to have done so and so; you ought to have pooled certain trains; you ought to have abandoned certain lines." We had a case the other day, an illustration, of the C.N.R. abandoning 141.2 miles.

MR. SHEPARD: Yes.

THE CHAIRMAN: You would have the Board say, as "You should have abandoned that and you did not." You refer to projects of that sort, and you would have them take that into consideration as against the railways when they want freight rates adjusted?

MR. SHEPARD: Yes.

THE CHAIRMAN: That is what the Board should be empowered to do?

MR. SHEPARD: Yes.

THE CHAIRMAN: In arriving at these things would

the Board just do this of its own motion, or would it have to consult these communities as has been the practice up to the present?

MR. SHEPARD: The way I envisage it is this--

THE CHAIRMAN: You must have one or the other. Either you want over-all economy to be ordered by the Board and taken into account or you want something of a shifting economy, that is to say, provided everybody is satisfied then go ahead and if not stop.

MR. SHEPARD: So far as Manitoba's position is concerned perhaps it can be summarized this way, that we consider that the railways probably will co-operate in effecting economies in the future. We also recognize that because of increased traffic volume possible economies are not as great as they were before the war. There is no question about that, but we do say that at the present time the economies to be effected are entirely within the discretion of the railways themselves, and because of competitive situations between the railways it may very well result in a stalemate with nothing being done under the Act. We say that situation defeats the purpose of the Act. Then we seek a way of remedying that situation, and the remedy we suggest is that the Board should be empowered to examine what is going on between the railways, suggest to them measures of co-operation, and then take into account those measures. Of course they will be reflected in the balance sheet of the company if they have been given effect to, and those that have not been given effect to should be taken into account in determining the financial need of the railway.

THE CHAIRMAN: You are proposing a specific amendment which you put before us to have enacted. That amendment says that in determining any application the

Board shall have regard to any savings which have been or which should have been effected, including savings under the Canadian National-Canadian Pacific Act. The words are "should have been effected." Once you get that into the law you see it is very full of meaning.

MR. SHEPARD: I agree, Mr. Chairman. The outline of the suggestion I have endeavoured to give your lordship is as we would envisage the amendment working out in practice.

COMMISSIONER ANGUS: Mr. Shepard, under this amendment would you allow the Board to say to the railways, "You should have abandoned your expiry rates years ago but you did not and we are going to dock you so much."

MR. SHEPARD: No.

COMMISSIONER ANGUS: Would not the language do that?

MR. SHEPARD: I think it might.

COMMISSIONER ANGUS: If you want the railways to play Russian pledges with their deficit mileage and to abandon
/this, that and the other thing, if costs rise would you not need a totally different type of Act for that purpose?

MR. SHEPARD: That is quite possible.

COMMISSIONER ANGUS: If you could imagine the Board in hearing an abandonment case saying, "This line may be abandoned within six months" and then the provincial government or dominion government or someone offered the railway X dollars a year to continue it in operation, then political pressure would be put on the provincial government concerned or the dominion government to produce a subsidy. If you really wanted to make the thing work you could do it in ways like that, but does that really do more than create a rather vexatious procedure?

MR. SHEPARD: Perhaps I might make a general

comment on all our amendments. Until we were asked to offer amendments it had not been our intention, although we had considered it, to file any amendments. What we had intended to do was to have the views of Manitoba put before the Commission. The reason we had intended to stop short of suggesting amendments was that we were not redrafting the entire railway legislation, which might very well be a necessary result of this Commission, and we felt that perhaps we were not competent to attempt to redraft certain aspects of the legislation which might result in a distortion of the whole scheme under the present Act.

A. Amendments re Safety

This is the first matter referred to in paragraph 7 of Mr. Covert's memorandum, and we are not making any submission in this regard.

B. Grade Separation

In paragraph 7(b) and 7(c) Mr. Covert refers to the proposals by the two railways with respect to grade separations. The C.N.R. proposals are found in Chapter 6 of their Brief commencing on page 161. The C.P.R. proposals are found in Part 2 of that company's submission, commencing at page 137.

The views of Manitoba on this matter may be summarized as follows:

(1) Manitoba supports the suggestion that the Railway grade crossing fund should contribute 70%, which is the C.P.R. suggestion, or 75%, which is the C.N.R. suggestion, of the cost of safety installations;

(2) Manitoba opposes the proposal of the C.P.R. that the \$100,000 limitation on each project should be eliminated. If however the Dominion

Government sees fit to increase substantially their annual contribution to the fund, then Manitoba would agree to an increase in the present limitation. Under present conditions the Dominion Government contributes \$500,000 annually to the fund and Manitoba's fear is that if the \$100,000 limitation were removed the monies of the fund could conceivably be utilized on one or two large projects in any year with the result that contributions from the fund would not be distributed as widely as they have been in the past;

(3) Manitoba supports the proposal of the C.N.R. that money from the fund should be used for operation and maintenance as well as for installation;

(4) Manitoba does not agree with the C.N.R. that the statute should provide a limit to railway contributions to the lesser of $12\frac{1}{2}\%$ of cost or the capitalized value of the benefits to the railways. It is Manitoba's view that if the fund is to provide for 70% or 75% of the cost, the balance of the cost should either be divided in the discretion of the Board of Transport Commissioners as it deems reasonable under the circumstances in each case or there should be an equal division of such balance between the railways and other interested parties concerned in each case.

(5) With reference to the proposal that assessments be permitted against the Crown, it is assumed that this means against the Crown in the

right of the Province. It is pointed out that this raises a constitutional question as to the validity of the Dominion by statute to authorize a Court of Record to make an award against the Crown in the right of a Province. Manitoba expresses serious doubt as to whether it is within the competence of the Dominion Parliament to pass such legislation.

(6) Manitoba opposes the proposal to amend Section 264 as put forward by the C.N.R. Our reading of this Section does not reveal that it imposes any duty upon the Railways and its retention is considered by Manitoba to be important from the safety point of view.

(7) Manitoba opposes the proposal of the C.N.R. to repeal Section 260. With the increasing development of highways, Manitoba considers that the retention of this Section is necessary to prevent efforts being made to obtain contributions from the Province concerned in the event that branch lines may be constructed in the future across existing provincial highways.

It has been Manitoba's experience, during the past few years, in cases of level crossing construction and protection, that the Government of Manitoba has been the applicant, and as such it has borne the greater part of the costs both of construction and of maintenance of these crossings. Whether or not the Board of Transport Commissioners has the power to assess the Crown has been of little consequence, as the Province has had to accept voluntarily the Board's ruling or its application would

not be entertained.

Another matter of concern to Manitoba is this:

If a crossing is deemed to be a "new" one by the Board, even though the crossing is in a location almost identical to the former one, no grants can be made from the Railway Grade Crossing Fund, and in these cases, Manitoba has found that the Board assesses it not only with the full costs of constructing the crossing, to which the Railway Grade Crossing Fund would not contribute in any event, but also the full costs of installing and maintaining any protective devices deemed necessary. It is Manitoba's view that the Railway Act should be amended to make it possible for new crossings to receive aid from the Fund, and Manitoba therefore supports the re-draft of Section 262(1) submitted by the C.N.R.

---At 1.00 p.m. the Commission adjourned to resume
at 2.45 p.m.

OTTAWA, ONTARIO
WEDNESDAY, MAY 3, 1950.

A F T E R N O O N S E S S I O N

MR. SHEPARD: The next subject I wanted to mention very briefly is at page 50, "Mail and military rates".

Paragraph 7 (d) of Mr. Covert's memorandum refers to the suggested changes in Section 351 of the Railway Act and Section 80 of the Post Office Act with respect to mail and military rates. Manitoba does not oppose the position taken by the Railways on these matters.

Then on the subject of "Appeals to Governor-in-Council", paragraph ⁷(e) of Mr. Covert's memorandum makes reference to the suggestion developed in Part I of the C.P.R. submission commencing at p. 142 that appeals to the Governor-in-Council be abolished. Manitoba is unalterably opposed to this suggestion.

At the present time Sub-section 1 of ~~xx~~Section 52 confers power upon the Governor-in-Council either upon petition or of his own motion to vary or rescind any order, decision, rule or regulation of the Board. Manitoba has already submitted an amendment to Section 52(1) - - and also, I might add, to ~~s~~Section 38.

THE CHAIRMAN: The two Sections, that is?

MR. SHEPARD: Yes.

COMMISSIONER INNIS: Page 13.

THE CHAIRMAN: You have already submitted amendments to Sections 52(1) and Section 38?

MR. SHEPARD: Yes.

THE CHAIRMAN: Have we been through those?

MR. SHEPARD: No, we have not, Mr. Chairman.

On page 13 the amendment to Section 38 reads (it is an additional sub-section 2):-

"The Governor-in-Council may also give general directions to the Board in respect to the policy to be followed by the Board in the exercise of its jurisdiction under this Act."

And the note reads:-

"This amendment permits the Government to give directions to the Board."

THE CHAIRMAN: Just a minute now, amend Section 38, what is 38?

MR. SHEPARD: 38 confers upon the Governor-in-Council the power to refer matters to the Board for report or action, and this amendment increases that authority under Section 38 by - -

THE CHAIRMAN: But you have that word "policy" there. Can you tell us what meaning there is attached to it here, because, mind you, in an Act it will have to be interpreted.

MR. SHEPARD: Yes, sir. I think if I could be permitted to go through the part of my argument dealing with this matter, that it might be apparent by the time I have covered it. Then the amendment to Section 52 which is right on page 13 following - -

THE CHAIRMAN: Would you pardon me a second now. 31 is the one which empowers the Governor-in-Council to refer matters to the Board for report or action, and you would add this sub-section which would - -

MR. SHEPARD: Give the Governor-in-Council ---

THE CHAIRMAN: Have the Government indicate to the Board from time to time what policy it must follow.

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: Well, in what? You say in the exercise of its jurisdiction. That is terribly wide.

MR. SHEPARD: It is, sir. I appreciate that, but I said a moment ago that I think our concept will be clear if I am permitted to go through what I have prepared in argument.

THE CHAIRMAN: That was 51?

MR. SHEPARD: Section 52 which is also on page 13, has been amended by the portions that are underlined there. At the present time Section 52(1) in the Act simply permits the Governor-in-Council to rescind any order to the Board. Our amendment would extend that power to "review, rescind, change, alter or vary". Then in addition to that - -

THE CHAIRMAN: Now, just a second. 52, well, the present Act says the Governor-in-Council may vary or rescind.

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: That is not enough, you think?

MR. SHEPARD: No, we have added to that: "Review, change, alter".

THE CHAIRMAN: Well, how could they vary without reviewing, or rescind for that matter without reviewing? Would you think the word "reviewing" is unnecessary there?

MR. SHEPARD: It is perhaps - -

THE CHAIRMAN: The whole thing is subjective to the word "may" you see. The Governor-in-Council

may vary or rescind, and they certainly may review.

MR. SHEPARD: I think perhaps you are right, that you must necessarily review before you can do the other action that is permitted.

THE CHAIRMAN: Well, has this section been in the Act ever since 1903 anyhow?

MR. SHEPARD: Yes, I think that is correct.

THE CHAIRMAN: Has it been found effective at all?

MR. SHEPARD: Well, I was going to refer to the judgment of the Assistant Chief Commissioner. He considers that the Governor-in-Council did not have jurisdiction to do what they did do as a result of the Provincial Appeal to the Cabinet in 1948. That was, to send the matter back with directions to the Board and it is to overcome that lack of jurisdiction in the Governor-in-Council that the Assistant Chief Commissioner expressed what we suggest in this amendment.

THE CHAIRMAN: But you would cover that by the second part of your proposed amendment, when you say: "Remit any matter to the Board with directions respecting the disposition thereof".

MR. SHEPARD: Yes, Mr. Chairman.

THE CHAIRMAN: But before you get down to that there is the beginning where you add the words "review, rescind, change, alter or vary" instead of the words "vary or rescind" which are there now. It is in respect of that that I am asking you whether this section has been found effective.

MR. SHEPARD: No, I would not say that it has, and it may be that we have ---

THE CHAIRMAN: When the section has been in use for all these years, -- 47 years.

MR. SHEPARD: Yes.

THE CHAIRMAN: Does it leave it that way?

MR. SHEPARD: I am inclined to agree with that.

THE CHAIRMAN: I don't think you are doing anything to it when you put in the words "may review". Of course they may.

COMMISSIONER ANGUS: Have you put in " /may review" for this purpose, that if they are not going to rescind, and they are not going to vary, but are going to remit, that they have to review first; "rescind or vary and remit" -- that they may have to make a variation before they can remit. Was that the suggestion?

MR. SHEPARD: I think we had something of that order in mind, but from what the Chairman has just suggested, I would think that his reasoning would apply equally well to the use of the word "remit", that you would have of necessity to review the matter before you would be in a position to remit in fact.

THE CHAIRMAN: You see, what would happen would be this, I suppose, that the Governor in Council would have the order there and they would first review it.

MR. SHEPARD: Yes.

THE CHAIRMAN: Then they would decide whether to vary or rescind it, or to remit it. Now, they have assumed that they had power to remit it, so far.

MR. SHEPARD: Yes.

THE CHAIRMAN: Because they have.

MR. SHEPARD: They have done so.

THE CHAIRMAN: Or the remissions. The Board expresses a doubt about that power.

MR. SHEPARD: Yes, I might just read that, sir. This is from page 17 of the 8% Judgment of September 20th, 1949, and it is the dissenting judgment of Assistant Chief

Commissioner, Mr. Wardrope, and at the top of the page:

"The majority decision....."

and he is referring to the 21% decision --

"....was appealed by the Provinces to the Governor in Council under the provisions of Section 52 of the Railway Act. By this section the Governor in Council is given power 'to vary or rescind' of any Order, decision, rule or regulation of the Board.

The Governor in Council did not exercise his powers of varying or rescinding but allowed the award of 21% to stand. The Governor in Council did, however, by Order in council P.C. 4678 dated 12th October, 1948, refer back to the Board for consideration the complaints of the appellant Provinces for review by the Board."

Then he goes on to set out what is covered in that P.C.4678 and he continues on page 18:

"On the re-hearing by the Board of the complaints of the Provinces, the latter --

that is, the provinces --

"strongly urged upon the Board that the language of P.C.4678 was a mandatory 'direction' by the Governor in Council to apportion those financial requirements the Board found in its judgment reasonable and chargeable against railway operations particularly fixed charges and Dividends and Surplus.

The Governor in Council

-- and this is the meat of the comment --

".....has no powers in this regard except such as are set out in the Railway Act, and the only power specifically given by Section 52 is to vary or rescind any Order, decision, rule or regulation of the Board. Whether the Act does or does not give the Governor in

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"Council power to refer back to the Board for review a decision appealed to him under Section 52, it has been the customary action taken and the Board has always acted upon it."

THE CHAIRMAN: What has been the customary action?

MR. SHEPARD: The customary action in the past appeals has been for a remission back by the Governor in Council, and in the past, as a matter of practice, the Board has acted upon it; but Assistant Chief Commissioner Wardrope here considered that it is perhaps an ultra vires act of the Governor in Council to do what has been done in the past.

"I do not think that under the Act there can be a 'direction' to the Board to do that which the Provinces allege should be done by the Board under the Order in Council."

THE CHAIRMAN: I see. We have not the order of the Government back to the Board before us. At least, you have not read it yet. I do not know just what it did contain, but apparently you and this Commissioner contend for a direction to the Board to do something.

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: Not only to review.

MR. SHEPARD: That is correct.

THE CHAIRMAN: But actually to make a certain specific disposition of the case.

MR. SHEPARD: Yes.

THE CHAIRMAN: That is different, you see, and instead of varying the order themselves, they would say: "Now, here, you vary it".

MR. SHEPARD: That is the point.

THE CHAIRMAN: But that is what you ask to have confirmed: "Remit any matter to the Board with directions respecting

the disposition thereof".

MR. SHEPARD: That is correct, and that is the reason for this suggested amendment to Section 52 (1).

THE CHAIRMAN: Yes, the government then having examined the orders of the Board and listened to argument about it, could say: "This ought to be done, that order ought to be changed. Instead of the change or variation as we have power to do, we will send it back to the Board and tell them to change it."

MR. SHEPARD: Yes, I think probably the reason behind that is that the Governor-in-Council considers that a matter that they are asked to adjudicate upon, which is, let us say, of a technical railway nature, they are not qualified to deal with.

THE CHAIRMAN: But they are. If they direct the disposition which the Board has to make, we must assume that they are qualified to say what the disposition ought to be.

MR. SHEPARD: The manner in which they did this, my lord, was to confirm as a matter of principle the contentions of the provinces, but they did not do the actual technical work to arrive at the result.

THE CHAIRMAN: What I have in mind now is your draft amendment.

MR. SHEPARD: Yes.

THE CHAIRMAN: You would empower the Government to remit any matter to the Board with directions?

MR. SHEPARD: Yes.

THE CHAIRMAN: Not to review it and make up the Board's mind again, but with directions respecting the disposition thereof. That would go further.

MR. SHEPARD: Yes, it would go as far as we suggested or we argued. The Government did in fact do under P.C.4678.

THE CHAIRMAN: Have you got P.C.4678?

MR. SHEPARD: I do not want to read it all, Mr. Chairman. I think perhaps this is the relevant paragraph...

THE CHAIRMAN: How is it numbered? Mr. Demarais has just given me the Order in Council.

MR. SHEPARD: It is the last paragraph of the Order, Mr. Chairman:

"The Committee therefore advise that the Board" - that is the Board of Transport Commissioners -

"be directed to consider in the light of such changes in conditions of operations as have or will have taken place, the complaints set forth in the petition concurrently with the pending application for a further increase....."

I do not think I have to read the balance of that, but many other things...

THE CHAIRMAN: "and that the disposition by the Board of the matters set forth in the petition and any revision of Order No. 70425 that may result from such consideration be made by the Board in relation to its disposition of the said pending application." Well, is that not merely a direction to the Board to reconsider everything?

MR. SHEPARD: It is, sir, but then we have to go back in P.C.4678 and see the attitude expressed by the Governor-in-Council there, and I am just looking for the relevant...

THE CHAIRMAN: "Consider in the light of such changes" - those are changes that...

MR. SHEPARD: That have already been referred to

in this Order-in-Council.

THE CHAIRMAN: Where are they, then?

MR. SHEPARD: Well, I am just looking for them, Mr. Chairman. At the bottom of page 2, the last paragraph on page 2 reads:

"The Committee are favourably impressed with the view that income derived by the Railways from sources other than their railway transportation operations should not be entirely excluded by the Board in determining the corporate needs of the Railways. The payment of fixed charges and income taxes are corporate obligations of corporations as such, and the incomes of corporations, whatsoever their source, are liable therefor; provisions to be made for dividends and a surplus are likewise corporate needs and should be so considered. For these reasons, the Committee are of the opinion that some portion of the corporate needs should be borne by the income derived from non-railway operations."

THE CHAIRMAN: I have not found that here yet. You say it is at the bottom of page 2?

MR. SHEPARD: It is on the copy that I have, sir, yes. I have just read that. Then the next paragraph...

THE CHAIRMAN: It is in the middle of page 3 in the copy I have.

MR. SHEPARD: Then the next...

THE CHAIRMAN: "The Committee are favourably impressed with the view" - is that the view urged by the provinces?

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: "that income derived by the Railways from sources other than their railway transportation operations should not be entirely excluded" - there is the word

"entirely" there.

MR. SHEPARD: Yes.

THE CHAIRMAN: "...by the Board in determining the corporate needs of the Railways. The payment of fixed charges and income taxes are corporate obligations of corporations as such, and the incomes of corporations, whatsoever their source, are liable therefor; provisions to be made for dividends and a surplus are likewise corporate needs and should be so considered. For these reasons, the Committee are of the opinion that some portion of the corporate needs should be borne by the income derived from non-railway operations."

Then they go on and direct the Board that they must find that, that some portion...

MR. SHEPARD: The next paragraph, sir.

THE CHAIRMAN: They do not say what portion at all.

MR. SHEPARD: No. The next paragraph, sir, perhaps I should read:

"The Committee are further of the opinion that an investigation should be made by the Board in order to determine the apportionment to be made," - now, our argument on that phrase is that this is a direction to apportion -

"between railway earnings and other income, of fixed charges, depreciation, income taxes, dividends and surplus, and that the several subjects of complaint set forth in the petition should be referred to the Board to be dealt with by the Board pursuant to the terms hereof in so far as they are hereby determined, and otherwise as the Board may deem proper on such further investigation as the Board may consider to be warranted by the representations of the petitioning governments and the Railways, and by other developments subsequent to the Board's Order No. 70425."

THE CHAIRMAN: "in so far as they are hereby determined," - that implies that this Order in Council does operate a variation.

MR. SHEPARD: Yes, sir. Our submission to the Cabinet, which we have argued was given effect to by the paragraph I have just read, was that the Board in determining the financial needs of the C.P.R. should have made an apportionment between the rail and non-rail of the fixed charges, dividends and surplus; and our argument was and still is that the paragraph I have just read constitutes a direction to the Board by the Governor-in-Council to apportion, and then the method of working out that apportionment is left to the Board.

THE CHAIRMAN: Yes, but is it an apportionment that can be precise, by the nature of the subjects....

MR. SHEPARD: Yes, it can be. It is a matter of argument and opinion as to what is a proper basis of apportionment, but the one that was given effect to in the subsequent judgment of the Board as far as fixed charges are concerned was that they took the book value of assets used in the railway enterprise and the book value of non-rail assets and made the apportionment of total corporate fixed charges in that ratio.

THE CHAIRMAN: Yes; they have to find out what are the fixed charges, depreciation, income taxes, dividends, surplus, and then they are to apportion them between railway earnings and other income.

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: Is that the idea?

MR. SHEPARD: Yes, Mr. Chairman.

THE CHAIRMAN: Then what do they do after that?
What does that lead to?

MR. SHEPARD: Well, that led to the settlement of the principle of apportionment.

THE CHAIRMAN: I know, but what does it lead to then in the way of approaching the rate structure?

MR. SHEPARD: Well, all that it means, sir, is that instead of having the C.P.R. come forward as the yardstick with requirements amounting to the full dividends, the full fixed charges and the full surplus, part of those are allocated and apportioned to the non-rail assets, and therefore the requirements to be earned out of the rail earnings are reduced accordingly.

THE CHAIRMAN: At the present time we are interested simply in the procedure.

MR. SHEPARD: Yes.

THE CHAIRMAN: Then you say that the Government then committed this back to the Board with a direction that they were to deal with these matters - that is, railway earnings and other income on the one side, and fixed charges, depreciation and so on on the other side - in accordance with this division made here by the Government.

MR. SHEPARD: Yes. We say that this Order in Council settled as a principle and made a direction to the Board that an apportionment should be made, and then it was up to the Board to determine what was the proper apportionment.

THE CHAIRMAN: What was the proper apportionment.

MR. SHEPARD: Yes.

THE CHAIRMAN: How would they arrive at that?

MR. SHEPARD: How did they arrive at it?

THE CHAIRMAN: How would they arrive at that?

MR. SHEPARD: Well, they arrive at it in the manner I described just a moment ago. So far as fixed charges are concerned, they took the book value of assets in the rail enterprise, the book value of non-rail assets, and divided the

corporate fixed charges in the ratio that those two groups of assets bore one to the other.

THE CHAIRMAN: And then depreciation - was that all railway?

MR. SHEPARD: Well, actually that word "depreciation" in that paragraph I personally do not think should have been in there, because you cannot apportion depreciation in the same manner that you do fixed charges and dividends and surplus.

THE CHAIRMAN: Well, what did the Board do, in consequence of this order? One of the Commissioners expressed a doubt as to its validity, but did they act on it just the same?

MR. SHEPARD: Yes, they did.

THE CHAIRMAN: And they brought about this apportionment?

MR. SHEPARD: Not entirely. That is one of the matters that we are appealing against.

THE CHAIRMAN: Not entirely?

MR. SHEPARD: No. They apportioned fixed charges; they did not apportion dividends and they did not apportion surplus.

THE CHAIRMAN: I see. Now, in your amendment you say the Government may remit any matter to the Board with directions respecting the disposition thereof.

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: Do you think that language would clear up these things for the future?

MR. SHEPARD: Yes, I think it would, Mr. Chairman.

Then, returning to page 51:

"Manitoba has already submitted an amendment to Section 52(1) which would have the effect of broadening the present power of the Governor-in-Council to vary or rescind so that the power would include the right to

review, rescind, change, alter or vary, as well as the right to remit any matter to the Board with directions respecting the disposition thereof."

THE CHAIRMAN: I think the word "review" is usually used in talking of a tribunal which is taking a thing back.

MR. SHEPARD: I would be content to have that word struck out.

THE CHAIRMAN: That is what the word usually means. You go to a court to review, to look over again at something that is already considered and determined. Now, when the Government is approached this way, it is not looking at anything it has already looked at.

MR. SHEPARD: That is right.

THE CHAIRMAN: That is why I think the word "review" there is superfluous.

MR. SHEPARD: Well, I agree with you, Mr. Chairman.

COMMISSIONER INNIS: What is the difference between change, alter and vary?

MR. SHEPARD: Well, I am not too sold on those words, after our discussion either, Dr. Innis, and I think perhaps I would be quite content if we did not have a change, alteration or variation in that first part.

THE CHAIRMAN: I think the only thing that remains out of all we have heard so far is, in the main, that section 42 has been working for 47 years and has not been found wanting except in this last respect, that is, this power to remit.

MR. SHEPARD: That is correct, Mr. Chairman.

THE CHAIRMAN: Now, you would make it clear in the legislation that the Government has power to remit?

MR. SHEPARD: Yes.

THE CHAIRMAN: Not only to remit to the Board, leaving the Board with an open mind, but according to you

they should remit to the Board with directions to come to certain findings.

MR. SHEPARD: Yes, Mr. Chairman; and I go on to develop that here now.

"Much evidence has been adduced before this Commission which indicates the importance of transportation generally and the railways in particular in the national economy. Under the British North America Act jurisdiction over railways is given to the Dominion Parliament."

THE CHAIRMAN: That is, the railways interprovincially -- you have it here, over all railways.

MR SHEPARD: I think it is over all railways.

THE CHAIRMAN: No; there are railways which are---

MR SHEPARD: No, that is correct.

THE CHAIRMAN: Interprovincial railways.

MR SHEPARD: There would be interprovincial railways, yes, Mr. Chairman.

MR CARSON: 92 (10)(a) and 10(c).

MR SHEPARD: Yes.

It therefore becomes necessary to consider to what extent the Dominion Parliament should divest itself of that jurisdiction by placing the exercise thereof in the hands of an administrative tribunal such as the Board of Transport Commissioners.

THE CHAIRMAN: Now, that is going back. That was thought to be the most expedient thing to do over half a century ago.

MR SHEPARD: I agree, Mr. Chairman, but I think---

THE CHAIRMAN: I mean, as a result of experience of the other method.

MR SHEPARD: Yes.

THE CHAIRMAN: Having the Government fix rates.

MR SHEPARD: And I well recall the very lengthy discussion we got into on this subject when it was being presented in direct evidence. What I would like to do on it before you today is simply to place before you the views that I have set out here, and then perhaps not press the matter further.

THE CHAIRMAN: All right.

MR SHEPARD: Manitoba has expressed its views on this matter both in its submission in evidence at the Ottawa hearings; (see pp.56 and 57 - Manitoba's printed submission; transcript Vol. 44, p.8491 et seq.) and also in a statement which appears in the transcript, Vol. 67, p.13838. It is Manitoba's view that (as pointed out in the statement in Vol. 67) railway transportation in Canada is too vital a factor in the national economy to be regulated only by an independent tribunal such as the Board of Transport Commissioners without the ultimate responsibility for such regulation resting upon the Dominion Parliament and the Dominion Government. The ultimate responsibility for the Board of course now rests with Parliament since Parliament may change the Railway Act or personnel of the Board. Manitoba's position is that this control is somewhat less than what is desirable and that the Dominion Government should have power to direct the Board if occasion should arise in order to ensure that the attitude and actions of the Board are not inconsistent with what is in the best interests of Canada from the standpoint of national economic policy.

THE CHAIRMAN: Does that mean setting up another tribunal?

MR SHEPARD: No, Mr. Chairman.

THE CHAIRMAN: Who would direct the Board

MR SHEPARD: Who would direct the Board? It would

be a matter of Government policy, sir. The direction would be exercised pursuant to section 38 and section 52.

THE CHAIRMAN: Where would you get members for that kind of board?

MR SHEPARD: There is no other board suggested, Mr. Chairman.

THE CHAIRMAN: No, but I mean, ~~vr~~ who would become members of this kind of board that is being directed all the time as to what it should do?

MR SHEPARD: Well, my submission is that that need not be considered too bad a situation, and I have reference a page or two on in my argument to the situation in England, and I have also referred previously to the situation under the Aeronautics Act, which sets up the Air Transport Board.

The action of the Dominion Parliament in passing the Railway Act providing for the Board of Transport Commissioners is, in effect, a means by which the Dominion Parliament and Dominion Government delegate their legislative and executive powers to an independent tribunal.

This delegation leaves Parliament with control to be exercised only by way of change in the Railway Act. Delegation could, of course, be effected in other ways, one of which is that suggested by Manitoba, namely, that the Railway Act make provisions for government directives to be made to the Board in somewhat the same manner as is now provided in the Aeronautics Act, to which reference was made in our statement in Vol. 67.

THE CHAIRMAN: Yes, but have you got the Aeronautics Act here

MR SHEPARD: Yes, I have, sir. Perhaps you might like a copy of it.

THE CHAIRMAN: This is an Act which is adminis-

tered by the Minister, I see.

MR SHEPARD: Yes, it is, sir.

THE CHAIRMAN: What are the parts to which you refer?

MR SHEPARD: The Act was amended fairly substantially by chapter 28 of 8 George VI, which is on page 6 of the pamphlet I have just handed to you. Sections 9, 10 and 11 of the Act give the powers that the Minister of Transport has in this regard.

THE CHAIRMAN: Some sections say there shall be a board to be known as the Air Transport Board; is that the Board you have in mind?

MR SHEPARD: The Air Transport Board, yes, sir.

THE CHAIRMAN: Consisting of three members appointed by the Governor in Council. It gives the term of office, re-appointment, salaries, and so on, and independence of members of the Board, investigation and surveys, and recommendations. Now---

MR SHEPARD: Section 9 reads:

"Subject to the directions of the Minister, the Board shall from time to time make investigations and surveys relating to the operation and development of commercial air services in Canada and relating to such other matters in connection with civil aviation as the Minister may direct."

THE CHAIRMAN: Is that something like section 38 of the Railway Act?

MR SHEPARD: Yes, it is not unlike that, Mr. Chairman.

THE CHAIRMAN: It is a direction to investigate.

MR SHEPARD: Yes. Then section 10:

"The Board shall from time to time make recommendations to the Minister with reference to any investigation or survey made by it and shall advise the Minister

in the "exercise of his duties and powers under this Act in all matters relating to civil aviation."

Then section 11---

THE CHAIRMAN: They advise the Minister, you see, in the exercise of his ministerial powers.

MR SHEPARD: Yes, that is quite right, Mr. Chairman.

Then section 11:

"Subject to the approval of the Governor in Council, the Board may make regulations - "
And I do not think it is necessary for me to read all the types of regulation.

THE CHAIRMAN: That is a customary provision too; they make regulations, and they are issued then by the Governor in Council.

MR SHEPARD: Yes.

THE CHAIRMAN: Well, what is the point, then:

MR SHEPARD: The Air Transport Board, sir, is subject to directions from the Minister.

THE CHAIRMAN: Well, in the same way as the Railway Board is by section 38 of the Act.

MR SHEPARD: No, I do not believe, sir, that the Railway Act is as broad in the jurisdiction that the Minister exercises over the Transport Board as it is over the Air Transport Board.

THE CHAIRMAN: Well, section 9 says that he may direct them to investigate something or survey something, then they do it, and then they make recommendations back to him as to what he ought to do, not what they ought to do.

MR SHEPARD: He is a free agent to do as he thinks best.

THE CHAIRMAN: " . . . shall advise the Minister in the exercise of his duties and powers under this

Act in all matters relating to civil aviation."

MR SHEPARD: Yes; but my point is, Mr. Chairman, that it does not require the Minister to carry out the recommendations of the Air Transport Board.

THE CHAIRMAN: The Act says that he is the one who administers the Act; at the very beginning it says that.

MR SHEPARD: That is correct.

THE CHAIRMAN: And this Board is there to advise him as to how he should administer it.

MR SHEPARD: Yes, sir; but---

THE CHAIRMAN: If this law of Canada was the same as it used to be, where the freight rates were set by a Minister of Railways, then you had a board who would advise him as to how he should go about it; that would be one thing; but would you bring us back to that?

MR SHEPARD: No, I would not. I think perhaps if I continue with what I have prepared here it might make it clear, Mr. Chairman.

It is pointed out that the practice of delegating powers to so-called independent administrative tribunals is an American one which has been copied in Canada and which differs from the English system, where at least some comparable regulation has been and is today carried on in departments of the state and thus under the direct control of the executive government.

Even before 1945 when the Labour Government was elected in England, it is apparent that if the object of legislative regulation was to subject some industry, or some class of private rights, to the control of the British Government to ensure that its activities were planned and carried on in accordance with national policy, then the regulatory body would almost invariably be made re-

sponsible to some minister, and be placed under his direction and control. Regulation of this kind would be carried on either by a tribunal or board under ministerial control, or by the responsible minister himself through his department.

An example of a tribunal of this kind is to be found under The Electricity Supply Act, 1926, by which the Electricity Commissioners were constituted to control and regulate the production and transmission of electricity. In his book published in 1941, entitled "The Independent Regulatory Commissions", Professor Robert E. Cushman, Professor of Government, Cornell University, states at p.537:

"In practice, the Electricity Commissioners enjoy virtually complete independence in their day-to-day work. The Minister exerts no influence on their decisions on technical or quasi-judicial matters. Perhaps the technical character of much of their work is in itself a protection against political interference. But their immunity from pressure goes beyond that, and results from the clear disposition of the Minister to protect their independence and impartiality. There are, however, matters of broad policy affecting the government's control of electricity supply and distribution on which the Minister must assume direct responsibility and on which, therefore, he issues instructions to the commissioners. In all such matters they are a part of his department and subject to his direction. In short, the happy result seems to have been achieved of permitting the Electricity Commissioners to act with complete independence and impartiality in their day-to-day handling of cases, and especially in matters affecting private

rights, and at the same time insuring their conformity to broad lines of national policy in the field."

THE CHAIRMAN: So far as that example is concerned, the power left to the Minister under that Act is the control of electricity supply and distribution.

MR SHEPARD: Yes, sir.

THE CHAIRMAN: That is all.

MR SHEPARD: Yes.

THE CHAIRMAN: Well, what part of railway regulation would you allow to the Minister or to the Government?

MR SHEPARD: Only that part, Mr. Chairman, which is necessary to insure that railways are performing the function that the Dominion Government thinks they should perform in the national economy.

THE CHAIRMAN: What do you think they should perform?

MR SHEPARD: Well, I would say that the function they are performing today is the function that they should continue to perform.

THE CHAIRMAN: Well, haven't you altered that by your amendments here? You say in matters of policy they must take their directions from the Government.

MR SHEPARD: Well, we can visualize, and it is not a situation that exists today, but there is a possibility -- I think it has been brought out by questions directed to me by Dr. Angus yesterday -- what is going to transpire in the event that all transportation costs in this country should be borne by the long-haul traffic. Now, it may be under circumstances such as that that the Government would have to formulate a policy for the relief of the outlying districts and give directions to the administrative tribunal.

THE CHAIRMAN: I think myself you would have legislation if you ever came to that, but one of your wit-

nesses told us when he was asked that such a matter even as whether rates should be fixed horizontally or otherwise was a matter of policy which the Government should determine every time there is a hearing.

MR SHEPARD: I do not recall that particular evidence; it may well have been.

THE CHAIRMAN: Well, I think Mr. Moffat told us that. Now, is that what you really mean?

MR SHEPARD: No, it is not, Mr. Chairman.

THE CHAIRMAN: You have receded from that position?

MR SHEPARD: Well, I do not really think that Mr. Moffat meant it.

THE CHAIRMAN: Well, look up the evidence and make sure, because I think he did.

MR SHEPARD: Well, he may have said it, but he was pushed rather hard on this particular point, and---

THE CHAIRMAN: Well, take a point like that. We have heard a lot about the general increases being fixed on a horizontal basis, and the Board is asked to do so again; would you leave the Board free to determine that according to your proposals, or would you say the Board must ask the Minister what it ought to do?

MR SHEPARD: No; all that we are asking for---

THE CHAIRMAN: What would you want in that particular case

MR SHEPARD: All that we are asking for is this, that if the Board violates a principle---

THE CHAIRMAN: What is the principle?

MR SHEPARD: Well, I am now discussing with you, sir, the principle of the horizontal increase.

THE CHAIRMAN: Yes.

MR SHEPARD: If the Board violates the view that

the provinces hold on horizontal increases---

THE CHAIRMAN: You mean does not accede to that view?

MR SHEPARD: Does not accede to that view; we want to be free to appeal that to the Governor in Council.

THE CHAIRMAN: Well, you are free.

MR SHEPARD: We are free now. Now, the next step is that we want to have the Governor in Council through the suggested amendment to remit -- the amendment we have suggested to 52(1) -- we want the Governor in Council to be free to remit that matter and settle the principle---

THE CHAIRMAN: Remit with a direction?

MR SHEPARD: With a direction, not to do the final finding, but to settle the principle, as they did on this apportionment matter that we were discussing a few moments ago; and that is as far as we would envisage this power of remission to go.

THE CHAIRMAN: Yes, but can't you do all that today?

MR SHEPARD: Well, from what I have read of the Assistant Chief Commissioner's judgment, he considers that the Governor in Council has no power to give directions to the Board of Transport Commissioners.

THE CHAIRMAN: Although they have done it.

MR SHEPARD: Although they have done it; but that does not necessarily mean they have the power.

THE CHAIRMAN: What you want to make sure of is that they do have power to remit.

MR SHEPARD: That is exactly the point.

THE HAIRMAN: With directions.

MR SHEPARD: Yes.

THE CHAIRMAN: And they have done it in the past.

MR SHEPARD: They have done it in the past, and

the Board has acted on it.

THE CHAIRMAN: You want to make it clear that they have that power.

MR SHEPARD: Yes, Mr. Chairman.

THE CHAIRMAN: Well, that is one thing; but are you going any further than that?

MR SHEPARD: No.

THE CHAIRMAN: When you use this word "policy"?

MR SHEPARD: No.

THE CHAIRMAN: That is all you mean, is it?

MR SHEPARD: That is all we mean, Mr. Chairman.

THE CHAIRMAN: All right, then, go on.

MR SHEPARD: Resuming at the top of page 54:

Other examples of ministerial control in England existing prior to 1945 are found in the powers exercised by the Minister of Health under The National Health Insurance Act, 1936 and The Housing Acts, 1936, in addition to which the Minister of Health acted as a tribunal, hearing appeals from awards made under The Old Age Pensions Act, The Blind Persons Act, and The Widows, Orphans and Old Age Contributory Pensions Act.

THE CHAIRMAN: Are you adding anything to the case by all this? You tell us now that all you want is a continuation of the present procedure whereby you appeal if you are not satisfied and the Government then can remit back with a direction.

MR SHEPARD: No, I do not believe I am, sir. We perhaps could have the balance of that page taken as read.

THE CHAIRMAN: In that case, then -- I want to make sure now -- the Board would be free to exercise its own discretion unless somebody appealed from it to the Government.

MR SHEPARD: That is right.

THE CHAIRMAN: That is right, is it?

MR SHEPARD: Yes, Mr. Chairman.

The activities of the Ministry of Transport in England afford a good example of industrial regulation. The Minister of Transport prior to 1945 exercised powers under The Road Traffic Act, 1930, The Local Government Act, 1929, The Bridges Act, 1929, The Merchant Shipping Act, 1894, The Road and Rail Traffic Act, 1933, and The Railway Regulation Act, 1940.

It is further pointed out that there is today within the framework of the present Railway Act in Canada a fair measure of control by the executive arm of government. In essence, what the Board of Transport Commissioners is doing is merely to exercise an executive function of government.

Mr. Carson has pointed out, and I think he is quite right, that perhaps I should read the last paragraph on page 54, because it does deal with the C.P.R.'s submission.

It is Manitoba's submission that there is therefore a clear choice open to this Commission either to recommend that the present control through Section 52 be left unaltered or to recommend adoption of the suggestions made in this respect by Manitoba. In any event there is, in our view, no basis in logic by which effect could be given to the C.P.R. submission that Section 52 of the Railway Act should be repealed.

THE CHAIRMAN: Yes. On the one hand the C.P.R. do say that there should not be any appeal to the Government at all; that is right.

MR SHEPARD: It is section 52(1).

THE CHAIRMAN: That is, the C.P.R. say there ought not to be any appeal to the Government.

MR SHEPARD: That is correct, yes.

THE CHAIRMAN: At the time the legislation was put through, in 1903 I think, the question was debated then whether it was advisable to leave this appeal with the Government. Finally it was decided it was best to do it. Now the C.P.R. reopen that and say that the appeal now should be abolished.

MR SHEPARD: That is right, sir.

THE CHAIRMAN: You say that it should be continued.

MR SHEPARD: Yes.

THE CHAIRMAN: And that your use of the words "settling policy" merely means to say that on any such arrangement the Government should have power to remit to the Board with directions.

MR SHEPARD: Yes, sir.

THE CHAIRMAN: And that is all you want.

MR SHEPARD: That is all, sir.

Now turning to page 55:

E. Crow's Nest Pass Grain Rates

Mr. Covert's memorandum next refers to Section 325 (5) which preserves by Statute the Crow's Nest Pass freight rates on grain and grain products. Manitoba's views on this matter have already been presented to your Commission both in evidence and argument. (Vol. 105, p. 19405 et seq. and Vol. 108, p. 19954 et seq.) .

Then Mr. Covert refers again to the matter of reparations, which I have already dealt with on page 29 of my argument.

F. Reparations

Paragraphs 7(g) and 7(h) of Mr. Covert's memorandum deal with the question of reparations which has already been commented upon with reference to paragraph 3(f) of Mr. Covert's memorandum.

Then the next subject is Powers, Duties and Constitution of Board of Transport Commissioners, which is dealt with in paragraph 7(1) of Mr. Covert's memorandum. There are several amendments that Manitoba is suggesting with reference to these powers.

Paragraph 7(1) of Mr. Covert's memorandum requests an expression of opinion on any amendments to the Railway Act dealing with the revision of the powers and duties and constitution of the Board of Transport Commissioners.

Such amendments as Manitoba considers necessary relating to the powers and duties of the Board have already been referred to your Commission.

I think we have discussed all of the amendments, those dealing with rate-making powers. We have already discussed 325A, 325B and 325C and 438A, but there are two additional amendments, which are, the amendment to section 53, which appears on page 12 of our amendments, and the amendment to section 36, which appears on page 13, and perhaps I might read those now. The amendment that we are suggesting to section---

THE CHAIRMAN: Pardon me. You are reading beginning on page 56? It is the argument on page 56 now, is it?

MR SHEPARD: Page 55, Mr. Chairman, under the heading "Powers, Duties and Constitution of Board of Transport Commissioners".

THE CHAIRMAN: Then you refer us back to page 12?

MR SHEPARD: Yes, Mr. Chairman.

Section 33 we are suggesting should be amended by adding to it subsections 6 and 7. Section 33 is the section of the Act which defines the jurisdiction of the Board, and we are suggesting to be added as subsection 6 the

following:

"Notwithstanding the provisions of Sub-section (2) of Section 9 of this Act the Board is an administrative tribunal and its orders, decisions, rules and regulations shall be construed accordingly. The Board shall not be bound in any way by its previous decisions, procedure or practice."

And the note to that is:

"The purpose of this amendment is to make it clear that the doctrine of stare decisis does not apply to the Board."

Then we are suggesting a further amendment, another subsection, number 7, to section 33:

"Upon any hearing the Board may hear any evidence which in its opinion is relevant to the matter and shall not be bound by the legal or technical rules of evidence nor shall it be restricted to making a decision based only upon the evidence taken at the hearing."

THE CHAIRMAN: What does the Board do now when it is hearing a case?

MR SHEPARD: Well, our point, Mr. Chairman, was that they took the attitude that a court normally takes in litigation, of awarding the verdict to the litigant who makes out a case, and in that regard I would just like to refer to the judgment of Mr. Justice Kellock in the recent Supreme Court decision which I referred to this morning. It is 1950 Supreme Court Reports, starting at page 25; the judgment of the Court on page 31 contains this comment:

"In our opinion if anything involved in these matters was relevant" --

and he is referring to these grounds of postponing in the 8% judgment --

-- "to a determination of the application of the railways and the review of the 21 per cent judgment ordered by P.C. 4678, it was for the Board itself to make its own determination and it was not competent to the Board to await the investigation of such matters by some other body or the passing by Parliament of some future legislation with respect to them. Such a decision involves, in our opinion, a declining of jurisdiction."

That was one --

THE CHAIRMAN: You object to that, do you?

MR. SHEPARD: We consider that the Board as an administrative tribunal has now without these amendments the duty to conduct independent investigations, not to be bound by the ordinary rules of evidence, but in the past they have not treated a matter before it in that way.

THE CHAIRMAN: I do not see the connection there. In that case the judge who wrote that decision said that he found that what the Board had done amounted to a declining of jurisdiction, that is, a refusal to exercise its jurisdiction.

MR. SHEPARD: Because it had failed to make its own determination of these matters.

THE CHAIRMAN: Well, it gave reasons why it was not. They were waiting for somebody else to do something.

MR. SHEPARD: Yes.

THE CHAIRMAN: Well, what do you mean now? Do you mean now to provide that the Board should be empowered to wait for somebody else's decision?

MR. SHEPARD: No, just the reverse, Mr. Chairman. What we are asking for now is that these amendments be

added to the Act so that the Board will have before them in black and white a definition of their duty to make a determination themselves.

There is one further excerpt from the judgment of Mr. Justice Kellock --

THE CHAIRMAN: You mean to say if the Act had been then in the form in which you would now put it, the Board would have gone on and acted without waiting; is that it?

MR. SHEPARD: No, I doubt that they would have under the circumstances. But the reason that we want these amendments, Mr. Chairman, is that the Board has not considered that it has responsibility on its own. In the past it has become apparent to us appearing before the Board that they listen to the evidence as adduced and make a decision on the evidence as adduced. Now, we say that is wrong.

THE CHAIRMAN: Is not that why they hear applications?

MR. SHEPARD: We say that is wrong for an administrative tribunal, Mr. Chairman, that they have in addition to the duty of hearing evidence and sifting it, a duty, because of the nature and character of the tribunal, to get information themselves. They are not bound by the legal rules of evidence, so that the weight of evidence presented to them determines the issue. If there is something that they do not know the answer to, it is their duty as an administrative tribunal to find out what the answer is.

THE CHAIRMAN: And you say that they say they have no power to do that?

MR. SHEPARD: No, they do not say that they have no power, but they have not done it.

THE CHAIRMAN: How do you know they have not?

MR. SHEPARD: Because they have not made a determination of these matters that we have been discussing.

Then the second excerpt from the judgment of Mr. Justice Kellock appears on page 34. He says this:

"In granting a measure of relief, as it did by its interim order of 8 per cent, the Board concedes that the railways had made out a case for relief. The error lies in failing to proceed to determine the extent to which the interim relief granted was adequate or inadequate on the basis of the case made."

Now, our point is, Mr. Chairman, that in a railway rate case the provinces who have been in the role of respondents to the application are not in a position to adduce positive evidence before the administrative tribunal to contradict or controvert the evidence of the railways, and it is to perform that very function that the Board of Transport Commissioners exists. It is there to protect the public interest. We are not saying that it has not got the powers that we are putting forward in these amendments, but we are saying that we consider them necessary because in the past they have not exercised those powers.

THE CHAIRMAN: Now, supposing the railways apply for an increase of rates and the provinces do not appear to oppose the application, nobody appears to oppose the application; would not the Board still have the power and the duty to find out whether the application was justified?

MR. SHEPARD: I think they would, but that is the wording of Mr. Justice Kellock which I think is in point. He refers to the basis of the case made by the railways.

COMMISSIONER ANGUS: Are you taking that out of its context a little, Mr. Shepard? Suppose the Board had given as its reason for an interim order that it itself felt that it should make some investigations and get some more information than was actually before them. Do you think the Supreme Court Judgment would then have followed the lines that it did?

MR. SHEPARD: No, I doubt it very much.

MR. CARSON: That is the very point put to me in argument, but I did not challenge it.

THE CHAIRMAN: That is as it occurs to me, that the Board has this power now.

MR. SHEPARD: It has the power now. I have said right from the outset in this discussion that in my view the Board has the power now, but what we are objecting to is that in the past the Board has not behaved as if it did have the power, and we consider that if these amendments are included in the Act, it will be something that can be pointed to definitely and will assist the Board in carrying out its duties. The same general comment, Mr. Chairman, would apply to the suggested - -

THE CHAIRMAN: You should always be careful in trying to define things to over-define. When you enumerate certain things, to include those things you did not enumerate, there may be a rebound there against you some day. The usual thing with a

Board of that sort, generality is a better rule to be governed by than particularity.

MR. SHEPARD: I would certainly agree with you as a matter of principle for administrative tribunals, but Mr. Chairman, the Provincial experience before the Board in the past three years has been such that unless we controvert the railway evidence, the Board accepts it. We consider that the function of the Board is to protect the public interest by making their own investigations.

THE CHAIRMAN: How do you know their own investigations would support your argument?

MR. SHEPARD: I wouldn't care if it did or not. I want to see that they do their job.

THE CHAIRMAN: I think you have quite a good idea that they would.

MR. SHEPARD: Whether it would or not is not the point I am discussing now. I want to ensure that they do the job they are designed to do, and that if they can do it without these amendments, that is fine, but past experience is that they have not, we say.

THE CHAIRMAN: Haven't they their technicians, advisers and departments of investigation?

MR. SHEPARD: Until the recent rate case the Board had not a chartered accountant on its staff, and I am not exactly sure when they acquired one, but I think it was after the 21% Rate Case. At the time the 20% application was heard. There is an Exhibit filed with this Commission by Mr. Frawley, no. 279, which sets out the staff at the disposal of the Board today.

THE CHAIRMAN: Well, the staff may be insufficient.

MR. SHEPARD: Yes, I think that is true.

THE CHAIRMAN: But maybe it could be increased.

MR. SHEPARD: If I might, Mr. Chairman, I think I should continue with page 55. It is the last paragraph of that page.

While Manitoba considers that amendments will be necessary to bring about changes in the constitution of the Board of Transport Commissioners and its staff, we are of the view that changes can be effected in the main by recommendation rather than amendments to legislation.

THE CHAIRMAN: Just a minute, in the constitutitn of the Board the Act says what the constitution of the Board should be. We cannot change that without changing the Act.

MR. SHEPARD: That will require legislative amendment.

It is Manitoba's view that the Board of Transport Commissioners should consist of three members only - -

THE CHAIRMAN: Right there you would have to amend the Act of course.

MR. SHEPARD: That is right, Mr. Chairman.
- - who should be men whose judgment has been matured by the knowledge of and experience with matters of national concern. The Chairman of the Board should be a judge of the Exchequer Court of Canada. Such a Board would be qualified to deal with general rate cases and the other less onerous, but perhaps no less important matters relating to safety, service and the administrative machinery of the Board. The Board should

be empowered to retain on a temporary basis expert technical advisers of the very highest calibre in any field in which it is particularly concerned on rate cases. At the present the power to appoint such experts is restricted to that given to the Governor-in-Council under Section 21 of the Railway Act and it is recommended that this Section should be amended so that the Board ^{may} of its own motion make the appointment of experts.

It is further submitted that if the volume of routine work required to be performed by the Board of Transport Commissioners is too great for three men to dispose of efficiently, the Railway Act should permit the appointment of other officials to the staff of the Board of Transport Commissioners, who should determine applications and matters of a routine nature with the right to any party interested to have the matter reviewed by the Board of Transport Commissioners.

On the question of staff and the possible inauguration of a system of trial examiners, it is Manitoba's view that Sections 69 and 70 of the Railway Act give the Board (with the procedure now laid ^{down} under Section 53) approximately the same powers as the I.C.C. on this matter of trial before officials other than the members of the Board itself.

Manitoba is not in a position to make a detailed definite recommendation in this regard beyond what I have just expressed. However, it is recommended that your Commission could usefully analyze the Interstate Commerce Commission organization, with a view to recommending the adoption of those features of that organization which might be suitable to meet Canadian conditions, either in their present or in some modified form.

THE CHAIRMAN: Pardon me, Mr. Shepard, I want to make sure of this. You refer to Section 53 at the top of the page.

MR. SHEPARD: Yes, Mr. Chairman.

THE CHAIRMAN: Is that the right reference? It says that:-

"The Board may make general rules regulating...its practice and procedure."

MR. SHEPARD: Yes, but then we refer also -- it is under that Section that they make rules and regulations -- we refer to Sections 69 and 70 which deal with the inquiries which can be made by the Board:-

"The Board may appoint or direct any person to make an inquiry and report upon any application, complaint or dispute..."
And so on. That is how 69 starts out.

THE CHAIRMAN: Well then, they have that power now?

MR. SHEPARD: Yes.

THE CHAIRMAN: What are they lacking? What more would you give them in that respect?

MR. SHEPARD: Nothing more.

THE CHAIRMAN: The power of these inquiries to make findings, to adjudicate?

MR. SHEPARD: Yes, that might be considered. We are not making a definite and detailed recommendation in this regard, because we do not consider ourselves competent to do it.

THE CHAIRMAN: You say that these people should determine applications and matters of a routine

nature, whatever that may mean.

MR. SHEPARD: Well, that would include most anything except the general rate cases.

THE CHAIRMAN: The general rate cases don't come on often, do they?

MR. SHEPARD: I hope they don't, Mr. Chairman.

THE CHAIRMAN: Experience shows they don't.

MR. SHEPARD: Well, we have had three in the last three years, but prior to that it had been twenty-five years, I think, since the last one.

THE CHAIRMAN: You would have these people who may at the present time inquire and report, you would have them further empowered to dispose of applications?

MR. SHEPARD: Yes.

THE CHAIRMAN: Subject to an appeal to the Board, is that it?

MR. SHEPARD: Yes, what we have in mind - -

THE CHAIRMAN: You say that is what the I.C.C. does?

MR. SHEPARD: That is my understanding, sir.

THE CHAIRMAN: All right.

MR. SHEPARD: It should be emphasized that the function of the Board of Transport Commissioners is to fix rates just and reasonable to the carriers and the public and to protect the public interest by requiring a standard of service that meets the transportation needs of the shippers and the consumers and that meets certain safety standards.

Such a concept in Manitoba's view places a definite duty upon the Board of Transport Commissioners to keep current records and constant checks upon the

railways, their method of operation, and the fairness of rates charged. The Railway Act should make it clear, if indeed further clarity is required, that the onus is upon the Board of Transport Commissioners to safeguard the public interest in all matters within its jurisdiction.

It must be borne in mind that in the past the Board of Transport Commissioners has by its attitude indicated that because the provinces did not adduce evidence to controvert that adduced by the railways, the railways' evidence should be accepted. This puts a party other than a railway in any matter before the Board in the same relative position as a party in a lawsuit -- casting upon that party a burden of proof or disproof which is quite beyond his capacity to discharge in the face of the expert railway evidence.

THE CHAIRMAN: Do you think as a matter of fact the Board would admit that this is the case, that they do act in this way?

MR. SHEPARD: You mean, if you were to ask the members of the Board if they do? I don't know whether they would or not, Mr. Chairman.

THE CHAIRMAN: Have they ever said they were?

MR. SHEPARD: No, I don't believe they have.

COMMISSIONER ANGUS: There is some danger of misunderstanding the second line there:-

".....evidence to controvert that
adduced by the railways..."

Would you say that was true, irrespective of the quality of the evidence produced by the railways?

MR. SHEPARD: No, I would not.

COMMISSIONER ANGUS: Isn't that the point?

MR. SHEPARD: My point, Dr. Angus, is that I think I would go this far in saying that irrespective of the quality, the railways have a natural self-interest in any case before the Board, not that there is anything reprehensible or critical about them having that self-interest.

THE CHAIRMAN: That is why they are there.

MR. SHEPARD: That is why they are there, of course, and the Provinces are not equipped with railway experts or experts in these matters. We consider that the function of the Board is to critically analyze even the high grade evidence put forward by the railways.

COMMISSIONER ANGUS: Yes, I can see that, but doesn't this go a long way, the language used here, doesn't the Board place the onus on the railways in certain cases to do certain things?

MR. SHEPARD: Yes, you are quite right.

It must be made clear by legislation that one of the prime functions of the Board is to investigate through its own staff any and all evidence tendered by railway or shipper and to test railway evidence critically, rather than accept it without question simply because the opposing party has been unable to controvert it. Because of this past situation, Manitoba recommends that the Board be equipped with whatever staff of a technical and clerical nature may be necessary to make adequate studies and investigations of all matters under the jurisdiction of the Board.

With reference to the onus placed upon an administrative tribunal such as the Board of Transport Commissioners to safeguard the public interest, the

following quotation from "Public Utility Economics" by Emerson P. Schmidt, 1940, page 205 (revised preliminary edition) is relevant:-

"Under chairmanship of William A. Prendergast, the New York Commission tended to view its function as that of gathering facts and rendering judgment. For the most part the Commission waited for complaints from consumers and municipalities. It assumed that cities wished to prosecute their own cases, to hire their own experts and to appear as litigants. The procedure before the Commission thus resembled that before a Court. The Massachusetts and Wisconsin commissions have taken opposite view of their responsibilities and have aggressively tried to discover cases of discriminatory and extortionate rates or inadequacy of service. The theory underlying the creation of utility commissions was that the utilities could be expected to protect their own interests but the customers could not; hence the commissions were designed to act as 'people's defenders' and to adopt a policy of continuous scrutiny of company policy attempting at all times to foresee the effects of policies and to advise and order changes in the public interest."

It is the latter concept that Manitoba advocates.

THE CHAIRMAN: That is the procedure adopted by the Massachusetts and Wisconsin commissions?

MR. SHEPARD: Yes, Mr. Chairman .

THE CHAIRMAN: That is where the matters are concerning discriminatory and extortionate rates or inadequacy of service?

MR. SHEPARD: Yes, Mr. Chairman.

THE CHAIRMAN: So far as rates are concerned, the Board itself has fixed rates?

MR. SHEPARD: Yes.

THE CHAIRMAN: And finds that the railways, not using what they may , used only up to 5% or less?

MR. SHEPARD: Yes.

THE CHAIRMAN: At first blush they would say that they are trying not to be extortionate and not charging what they might charge.

MR. SHEPARD: I would not like this quotation picked out and said to give the entire substance of Manitoba's view.

THE CHAIRMAN: What sort of commissions are these here?

MR. SHEPARD: These are public utility commissions.

THE CHAIRMAN: What kind of public utility commissions?

MR. SHEPARD: Regulating power companies and the like.

THE CHAIRMAN: Power regulating and like companies?

MR. SHEPARD: Yes, Mr. Chairman.

MR. CHAIRMAN: In a state?

MR. SHEPARD: In a state.

MR. CHAIRMAN: In a whole state?

MR. SHEPARD: Yes, Mr. Chairman.

RECESS

(Page 21553 follows)

I was about to deal, Mr. Chairman, with the matter brought up in paragraph 8 of Mr. Covert's memorandum.

AMENDMENTS TO RAILWAY LEGISLATION GENERALLY

Paragraph 8 of Mr. Covert's memorandum of December 16th requests Counsel to deal with any proposed amendments to railway legislation generally including specific recommendations with respect to (a) agreed charges, (b) The Maritime Freight Rates Act, and (c) national transportation policy -- co-ordination of transportation agencies.

A. Agreed Charges

With respect to agreed charges, Manitoba's views may be found in the printed brief at page 122 (transcript Vol. 45, p. 8751). The views therein expressed amount to a request to this Commission to recommend the repeal of Part 5 of The Transport Act, 1938, Statutes of Canada 1938, Chapter 53.

In defence of a broadening of the basis for agreed charges, Mr. Fairweather for the C.N.R. stated (Vol. 109, p. 20108):

" . . . it is about the only means that the railway has of effectively meeting the competition afforded by the motor vehicle."

It is Manitoba's view that the agreed charge is a weapon given to the railways by which they are enabled in some degree at least to eliminate truck competition rather than to meet it. If the railways seek to justify the agreed charge solely on the ground that it enables them to meet truck competition, surely the same end can be accomplished by competitive rates and there is therefore no justification for retaining the agreed charge provisions in The Transport Act.

Then, dealing with the next two subjects in Mr. Covert's memorandum, I think it is perhaps unnecessary for me to read them; they can be put into the transcript.

B. Maritime Freight Rates Act

Manitoba makes no submissions or recommendations with respect to the Maritimes Freight Rates Act.

C. Coordination of Transportation Agencies

With respect to national transportation policy -- coordination of transportation agencies, Manitoba is not suggesting any amendments to railway legislation and has expressed its views in this matter in commenting on the second paragraph of Mr. Covert's memorandum.

Then there are certain miscellaneous subjects under paragraph 9 of the memorandum. The first one invites comment on the subject of amalgamation, unification or government ownership, and Manitoba's views on that are opposed to it; they are found in the submission and quoted in the argument, and I would suggest that perhaps they could just be put into the record without my reading them.

MISCELLANEOUS SUBJECTS

Paragraph 9 of Mr. Covert's memorandum invites the expression of views on a number of miscellaneous subjects which it is now proposed to comment upon.

(a) Amalgamation, Unification or Government Ownership

In Manitoba's main submission it is stated at the end of Chapter 1 (printed submission p.48; transcript Vol. 44, p. 8466):

"We should immediately make it clear however that we do not question the wisdom of continuing

the basic structure of Canada's present railway system in which the C.N.R., a government owned enterprise, competes with the C.P.R. operated as a privately owned railway. Although, in the remainder of this submission we make a number of proposals which would have the effect of laying down a more detailed framework of law and regulations within which the railways would be free to exercise their own judgment, nevertheless, we are strongly of the view that the C.P.R. should continue to operate as a privately owned system within that framework. We feel that administrative efficiency, operating efficiency and service to the public, will all be maintained at a better standard if Canada continues to have two competing major railways, one privately owned and one owned by the Dominion Government."

THE CHAIRMAN: When you say you are opposed to amalgamation, unification or government ownership, do you mean then that the two major railways should be allowed to continue the way they are? Is that it?

MR. SHEPARD: That is our view about it, Mr. Chairman.

THE CHAIRMAN: One should be a government railway and the other a private enterprise?

MR. SHEPARD: That is correct.

THE CHAIRMAN: And they both should be enabled to live; is that it?

MR. SHEPARD: Yes, that is our view on today's conditions, Mr. Chairman. We are not committing ourselves for the future.

THE CHAIRMAN: You want the Canadian Pacific

to remain a private enterprise?

MR. SHEPARD: Yes, Mr. Chairman.

THE CHAIRMAN: And alive?

MR. SHEPARD: Yes, Mr. Chairman.

COMMISSIONER INNIS: And both should be subsidized?

MR. SHEPARD: To the extent that we have recommended with reference to passengers, for example, yes.

(b) Air and Coastal Shipping.

(c) Ferry Service to P.E.I.

Manitoba expresses no views on items (b) and (c) above.

(d) Treatment of Hudson's Bay Railway

Item 14 of Manitoba's Brief of Points, dealing with this matter, appears at page 14 of Manitoba's printed submissions. The import of this item is to urge that maximum of utilization should be made of the Hudson's Bay Railway in order to ensure that transportation facilities will be maintained and developed in the newer areas in the northern part of Manitoba as well as for the purpose of developing traffic both to the markets of the world and from Europe and elsewhere. The matter was again referred to in the Submission presented to this Commission by The Honourable Mr. Campbell at the Regional Hearings of your Commission in Winnipeg on June 1st, 1949. Mr. Campbell's reference to the Hudson's Bay Railway is found at page 36 of Manitoba's printed Submission (Vol. 2, p. 80)

(e) Regulation of Trucking

In reply to a memorandum from Mr. Covert, I was instructed to express the views of the Manitoba Government on this subject, which I did in a letter dated December 16th, 1949, to Mr. Covert, the relevant portions of which read as follows:

- (1) While Manitoba is prepared to consider suggested improvements in its present system of truck regulation, it is of the view that the methods now followed pursuant to the Manitoba Highway Traffic Act and the Manitoba Municipal and Public Utility Act are satisfactory.
- (2) Manitoba is not prepared to surrender its jurisdiction over trucking.
- (3) Manitoba is not prepared to agree that its Public Utility Board should act in accordance with an agreed national policy on trucking nor is it prepared at this time to give any assurance that it would be willing to enact measures uniform in principle in order to give effect to such agreed national policy. This attitude is occasioned by the opinion of my Government that it would be unwise to commit itself to follow an agreed national policy before that policy has been defined. Manitoba is quite prepared to attend any conference that may be called for the purpose of formulating a national policy on the regulation of trucks.
- (4) Manitoba is not at this time prepared to agree to Dominion control of interprovincial trucking nor, in the alternative, to agree to control of all interprovincial trucking by a tribunal jointly operated by the provinces. Here again, however, my Government is prepared to attend any conference that may be called for the purpose of discussing the problem of control of interprovincial trucking.

THE CHAIRMAN: Who do you at present think ought to control interprovincial trucking?

MR. SHEPARD: At the present time I think Manitoba's attitude is simply one of willingness to consider the matter, but they do not feel that they can consider it without ascertaining the views of other interested governments at a conference along the lines that we have mentioned in this submission.

Manitoba would, of course, always be prepared to consider the advisability of putting into effect in Manitoba statutes and regulations uniform with other provinces, but Manitoba is not prepared to give a blank cheque commitment in advance to accept any type of control simply because it is uniform.

(f) Prohibition of Trucking through National Parks

Manitoba's view in respect to this subject is that National Parks should not be an artificial barrier to truck transport.

THE CHAIRMAN: Should they be any kind of barrier?

MR. SHEPARD: I would say no, Mr. Chairman.

THE CHAIRMAN: Not be a barrier?

MR. SHEPARD: Yes.

(g) Trans-Canada Highway

Manitoba expresses no views on this subject at this time.

(h) Chignecto Canal

Manitoba expresses no views on this subject.

(i) Advisory Committee for National Harbours Boards

Manitoba expresses no views on this subject.

(j) Quality and Efficiency of Service in Certain Regions

Manitoba expresses no views on this subject.

Then on page 64 we make a brief submission on the subject of Rate Base and Rate of Return. I might say, Mr. Chairman, that others from the provincial counsel group will be speaking in more detail on this subject.

THE CHAIRMAN: What is your view?

MR. SHEPARD: Well, it is set out, if I may read it, Mr. Chairman.

(k) Rate Base and Rate of Return

The position of Manitoba on this subject may be stated briefly. Under the existing legislation, in applying for a general increase in freight rates the Canadian railways are free to advance whatever yardstick they choose as a measure of the return which should be paid to investors. Those who oppose the application are free to attack the yardstick advanced by the railways and to advocate whatever yardstick they consider proper. The Board of Transport Commissioners must then reach a decision in the light of all the circumstances. Consequently the railways are free under existing legislation to discard the requirement basis and to substitute a rate base and a rate of return formula. If the C.P.R. should frame an application in that manner, the formula would be open to attack by anyone who opposes the application and the Board would be free to adopt any yardstick it thinks proper under the circumstances. It is our view that the present situation is satisfactory and that no legislation is required in this matter.

We would point out, however, that a switch to rate base and rate of return would not simplify the proceedings before the Board on rate cases. The bulk

of the evidence in such cases of necessity consists of an examination in detail of railway operating revenues and expenses. Only after the hearing of this evidence is completed, is attention directed to the question of how much should be made available by way of a return on investment whether that return is measured by requirements or by rate of return on an established rate base or by some other method.

Our basic position with respect to the net revenue to be made available to the railways is stated in the printed submission on page 97, (Vol. 45, p.86-98), as follows:

"Any decision as to the amount of net revenue to be made available to the Company in excess of current operating expenses and any related question of the return to the owners of the Company, involve considerations of extreme complexity. In our view these considerations are so closely related to the conditions which exist at the time when the decisions are being taken, that they should be assessed anew each time the Board reviews the level of freight rates. At each such review its decision should be based on the best interests both of the people of Canada and of the railways at that time. For that purpose it would be necessary to take a great variety of factors into account, but we feel very strongly that no figure or mathematical formula should be established and rigidly applied in these matters."

If a rate base should be established the Board could not, in our view, fix a rate of return thereon

without first giving due weight to requirements and all other relevant factors.

We, therefore, feel that your Commission should make no recommendation by way of suggested legislation or otherwise as to the use or non-use of a rate base formula or as to what would be a proper rate base ^{or a proper rate} /return thereon, and that the Board should be left free as it is today to make a determination of freight rate levels upon whatever basis it deems equitable at the time an application is under consideration.

COMMISSIONER ANGUS: Do rate base and rate of return get rid of difficulties of apportionment?

MR. SHEPARD: That is the only thing it would do, I think, Dr. Angus.

THE CHAIRMAN: Do I understand from all that, then, that, while you told us a while ago that you wish the railway situation to remain as it is -- that is, to have a private company and a government-owned company -- you, I take it, do not agree with the amendments proposed by the Canadian Pacific Railway to protect itself?

MR. SHEPARD: That is correct. We are opposed to that.

THE CHAIRMAN: You are opposed to that?

MR. SHEPARD: Yes, Mr. Chairman.

(1) C.P.R. as the Only Yardstick

In Chapter 4 of Manitoba's Submissions made in Ottawa (printed Submission page 67, transcript Vol. 44, p. 8545) Manitoba sets out its reasons for the opinion therein expressed, namely that: "In the future the level of freight rates in Canada will have

to be geared closely to the needs of the C.P.R. unless the C.P.R. is to face the risks of bankruptcy or nationalization." It is Manitoba's view that your Commission should include in its report a recommendation that the C.P.R. should continue to be the yardstick for rate-making in Canada.

COMMISSIONER ANGUS: Would not that recommendation make it quite impossible to do what you suggested earlier, that is to say, penalize any railway other than the C.P.R. if it did not eliminate wasteful expenditure?

MR. SHEPARD: I think it probably would, Dr. Angus.

COMMISSIONER ANGUS: How would you elect between those two principles as to which is to prevail?

MR. SHEPARD: Well, I think as long as the C.P.R. is taken as the yardstick it is essential that it be given sufficient revenue to live. If it is indulging in losing propositions it would be penalized.

COMMISSIONER ANGUS: But does not that create a certain disparity between the two railways? If the Canadian National Railway maintains a line which in your view it ought to abandon, it incurs no penalty; if the Canadian Pacific maintains a line which it ought to abandon it has part of its return disallowed. Now, if abandoning lines is unpopular, does not that force the Canadian Pacific to incur all the unpopularity and the Canadian National Railways to pose as a public benefactor?

MR. SHEPARD: Well, I can see your point, but, with respect, I do not think it would work out that way in practice, sir. My view would be that if an abandonment is suggested by either railway there is bound to be a hearing by the Board, and I do not think the public would get the idea of one being a benefactor and the

other the contrary.

COMMISSIONER INNIS: It does not worry you at all that the whole of the Canadian economy should be tied up to a single yardstick, whether it is C.N. or C.P.?

MR. SHEPARD: Not under today's conditions, because we have been functioning under that yardstick in the past and the economy I do not think has suffered too much to date; but I am not saying that for all time to come that is the view of my Government.

THE CHAIRMAN: Then you say that the rates should be geared closely to the needs of the C.P.R.?

MR. SHEPARD: Yes, Mr. Chairman.

THE CHAIRMAN: Do you mean their actual needs that they can show from time to time, or their needs subject to what they might have saved and failed to save?

MR. SHEPARD: I mean their needs subject to all the comments that the provinces have been making. The C.P.R.'s view of their needs has never up to date coincided with the provincial view of their needs, and it would include, as you suggest, the matter we were discussing this morning on economies.

(m) Feed Grain Assistance

Manitoba does not consider it necessary to make any submission at this time on this subject.

Now, there are several matters not covered in Mr. Covert's memorandum that were dealt with by Manitoba in its submission. The first one is the matter of railways instruments of National Policy, and, unless the Commission would like me to, I do not think it is necessary for me to read that; it could be taken into the record.

MATTERS NOT SPECIFIED IN MR. COVERT'S MEMORANDUM

Paragraph 10 of Mr. Covert's memorandum suggests that any other matters on which it is desired to make submissions should be treated under the heading of miscellaneous. It is now proposed, therefore, to refer to certain subjects which have been mentioned in Manitoba's evidence.

(a) Railways as instruments of National Policy

This subject is dealt with in the printed submission of Manitoba beginning at page 47 (Vol. 44, p. 8465). It was also referred to in the statement which I made on behalf of the Government appearing in Volume 67 of the transcript at page 13838. Manitoba's attitude in this regard has obtained support in the evidence of Dr. Britnell (Vol. 104, p. 19215 and 19230) and Mr. C. W. Clement (Vol. 107, p. 19736) with reference to the Crow's Nest Pass Grain Rates. At page 48 of Manitoba's printed Submission (Vol. 44, p. 8466) the following statement appears:

"The Government of Manitoba therefore takes the view that the Canadian Railway System and the companies which operate it, must be regarded as national instruments which must be used in an equitable manner, having regard to the aims of national policy, the needs of regional development and the maintenance of a satisfactory standard of service."

(b) Board as Policy Making Body

This matter is dealt with beginning at page 55 of the Manitoba printed Submission (Vol. 44, p. 8488 and Vol. 105, p. 19347). It is recognized that this

section of Manitoba's Submission created some confusion when it was originally presented.

THE CHAIRMAN: What was the gist of that section?

MR. SHEPARD: The gist of it was, Mr. Chairman, that the Board should be considered a policy-making body, and you may remember --

THE CHAIRMAN: Are you still standing by that?

MR. SHEPARD: Well, I hope I have clarified it in what I have here.

THE CHAIRMAN: All right, go on.

MR. SHEPARD: It is hoped that the following comments will have the effect of clarifying the concept which underlies the Manitoba submission. The word "policy" is capable of varying degrees of meaning. We have already expressed the views of Manitoba that upon the Dominion Parliament must fall the real responsibilities for declaring and carrying into effect national economic policy of which a necessary segment must be the field of transportation as it affects, and as it is affected by national economic policy.

It was not and is not the intention of Manitoba that the Board of Transport Commissioners should usurp these broad policy making functions of the Dominion Parliament. Rather it is Manitoba's view that since the Dominion Parliament has delegated certain of its constitutional authority namely that provided under The British North America Act over railways, to the Board of Transport Commissioners it should be recognized that the Board must necessarily formulate policy in order to work out its functions within the framework of the Railway Act. It is only

in this relatively limited sense that Manitoba intended to suggest the concept that the Board be considered a policy making body. In other words, the Board must make transportation policy within the powers conferred upon it under the Railway Act.

THE CHAIRMAN: You mean to say under the Act as it now is, or as you would have it amended?

MR. SHEPARD: As we would have it amended, Mr. Chairman.

COMMISSIONER INNIS: Do you deliberately change "carry" to "make"?

MR. SHEPARD: I am sorry, I did not hear that, sir.

COMMISSIONER INNIS: In the third sentence from the end, "in order to carry out its functions." You read that, "to make out its functions."

MR. SHEPARD: "In order to carry out its functions", it should be.

COMMISSIONER INNIS: "To work out its functions", was the wording you used.

THE CHAIRMAN: "To perform its functions."

MR. SHEPARD: "In order to carry out its functions."

I might mention, on that subject, that in volume 105 at page 19347 I did make a very short statement on the question of whether the Board should be an economic planning body, and at that time I indicated Manitoba's view, that it would not be an economic planning body but that rates are not fixed in a vacuum, and they are bound to have an economic effect when fixed, and the Board would no doubt have regard to that.

THE CHAIRMAN: Have regard to the economic effects of what it is going to do?

MR. SHEPARD: Have regard to the economic effects of the rates they would fix.

THE CHAIRMAN: Well, how can they have regard to economic effects unless they study the economic side of the fixing of the rates?

MR. SHEPARD: They do do that now, Mr. Chairman.

THE CHAIRMAN: Do they?

MR. SHEPARD: They have the Bureau of Transportation Economics.

COMMISSIONER ANGUS: Would you, for instance, contemplate the Board saying in certain circumstances, "We cannot agree to raising rates on long distance hauls of bulk commodities, because we think the shock to the economy would be too great"?

MR. SHEPARD: That is not an easy question for me to answer, Dr. Angus.

COMMISSIONER ANGUS: I meant as illustrating policy.

MR. SHEPARD: There have been cases -- I am sorry I have not got the references with me, but I know they are being covered by others of the provincial group -- there have been cases where the financial needs of the railways have not been given full effect to, on the ground that to do so would fix rates/^{which}would not be just and reasonable to the ratepayers.

THE CHAIRMAN: To the shippers?

MR. SHEPARD: To the shippers.

THE CHAIRMAN: Can you tell us any such case?

MR. SHEPARD: Well, I have not the references with me. I know that they are going to be dealt with by other counsel.

THE CHAIRMAN: Well, of course, if rates are not just and reasonable that is the end of them, they must

go out, because Section 325 says that the Board must fix and maintain fair or just and reasonable rates, and we have been told that means just and reasonable to the carriers, to the shippers and to the consumers or the receivers.

MR. SHEPARD: That is correct.

THE CHAIRMAN: The consignees.

MR. SHEPARD: Yes.

THE CHAIRMAN: In that kind of reasonableness and justice, you say in some cases they have said, while on the one hand the railways should get certain rates, on the other hand they would not be reasonable in respect of the shipper. Is that what you say?

MR. SHEPARD: Yes, Mr. Chairman.

THE CHAIRMAN: And then how do they arrive at a solution of that?

MR. SHEPARD: Then they granted something less than what the railways would otherwise have received.

THE CHAIRMAN: And something more than what the shippers would have liked to pay; is that it?

MR. SHEPARD: Well, it is always something more than what the shippers would like to pay, sir.

THE CHAIRMAN: Well, they have done that kind of thing, have they?

MR. SHEPARD: Yes, that is my understanding. My friend Mr. Carson tells me that those cases are confined to individual rates on individual commodities such as sand and gravel, but that they have never done it on the general level of rates.

COMMISSIONER ANGUS: That does away with the question, would you contemplate policy being carried to the point of doing this sort of thing with the general level of rates?

MR. SHEPARD: Yes, it does.

THE CHAIRMAN: I suppose it arose there in the case of the value of service.

MR. SHEPARD: Yes, I think that would be so. If the rates became too high the traffic would not move.

THE CHAIRMAN: Well, there must be knotty problems when rates must be just and reasonable in respect of three different bodies, that is, railways, shippers and consignees.

MR. SHEPARD: That is perfectly true.

THE CHAIRMAN: There is going to be difficulty.

MR. SHEPARD: It is a very complicated matter.

Then the next subject, Mr. Chairman, is referred to as Railway Service, Standard and Cost, and I do not believe it is necessary for me to read that, unless the Commission would like me to.

(c) Railway Service, Standard and Cost

Chapter 3 of Manitoba's printed Submission beginning at page 59 (Vol. 44, p. 8517) deals with this subject. It is considered to be self-evident that any regulatory tribunal such as the Board of Transport Commissioners charged as it is with the duty to fix just and reasonable rates must of necessity in determining the financial need of the railways examine into their costs and in so doing examine into the adequacy or otherwise of the standard of service provided by the railways. This general proposition was agreed to by Mr. Walker, the chairman of the Canadian Pacific Railway, in Volume 64, page 13411 of the transcript, although he subsequently on re-examination qualified his answer (transcript Vol. 65, p. 13664).

(d) C.P.R. Financial Position

This subject is dealt with in Chapter 7 of Manitoba's printed Submission beginning at page 97 Vol. 45, p. 8649A).

It is apparent from the C.P.R. evidence before this Commission (Vol. 64, pp. 13384 and 13402) that the Company is of the opinion that it must be placed in a position by increased revenue through increased freight rates where the confidence of the public is restored in its common stock to the point where the stock is selling above par which would enable the Company to sell additional stock and from the proceeds of such sale to embark upon a capital improvement program. It may well be that a capital improvement program is necessary if the Canadian Railways are to improve their plant sufficiently to compete in the transportation field.

It is Manitoba's submission that the financing of such a program should not and in fact cannot be done by the method suggested by the C.P.R. It is submitted that the C.P.R.'s attitude with respect to the necessity for restoring its credit position is entirely unrealistic in the light of the position in which railways all over this ~~area~~ continent and elsewhere find themselves today.

Since Manitoba rejects the C.P.R.'s suggested solution to its problem of raising new capital, it is necessary to give consideration to other methods that may be available. Manitoba has already suggested at page 102 of its printed Submission (Vol. 45, p.8673) that your Commission should give consideration to alternate solutions to this problem and it is emphasized that the suggestions either as to an improvement fund

or government guarantee of C.P.R. security issues are in the nature of suggestions only and do not presume to be exhaustive of the possibilities which may occur to your Commission. Manitoba is not in a position to make any definite recommendation as to what alternative method of financing should be adopted but it does recommend that your Commission should make a finding to the effect that it is not feasible at the present time for the freight payers to pay charges sufficiently high to restore the credit position of the C.P.R. in the world money markets as envisaged by the C.P.R.

THE CHAIRMAN: You say the C.P.R. must be enabled to go on.

MR. SHEPARD: Yes, Mr. Chairman, but I do not think that they should turn their backs as they have done up till now, on the possibility of such things as, for instance, we have suggested, of a government guarantee of security issues to assist them in a modernization program, which, as I view it, as I understand it, would be not a permanent outstanding obligation to the government. If they need this \$400 million that we have heard evidence on, let them acquire it after demonstrating that need through the sale of government-guaranteed securities -- this is just one possible solution -- then presumably they could effect savings in operating costs of sufficient size to retire that obligation and be free of the government security. But up till now they have kept entirely away from any suggestion of government assistance, and I think that their alternative, which is to raise freight rates to the point where their stock is selling at par, is asking too much.

THE CHAIRMAN: Have you any reason to know that the Government would agree to such a negotiation?

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MR. SHEPARD: No, I have no reason to know that, Mr. Chairman.

THE CHAIRMAN: That Parliament would approve of it?

MR. SHEPARD: No.

THE CHAIRMAN: Or the people?

MR. SHEPARD: No.

COMMISSIONER ANGUS: I gather that you do not agree with the Canadian Pacific 's position that the fair rate of return on their rate base should be tested by the cost of raising new capital?

MR. SHEPARD: No, I would not agree with that. one factor to be It might be/considered in fixing a rate of return.

COMMISSIONER INNIS: Would you like to have Mr. Gordon's proposed pool of money made available to both railways for the sort of purposes you have in mind rather than specifically for the purpose he has in mind?

MR. SHEPARD: Well, I have not thought of that, Dr. Innis. I am quite happy to have capital flow to the C.N.R. through any way other than raising freight rates.

I understand my time is up, and I think I would not object at all if the balance of my prepared argument is taken into the record.

In conclusion I would like to thank the Commission for bearing with me when I have been trying to explain certain parts of what I have had to say.

(Page 21573 follows)

Mr. Shepard

(e) Rates of Taper as Related to Distance.

Manitoba's views on this matter are set out at p.105 of its printed Submission and appear in transcript at Vol. 45, p.8683.

(f) Simplification of Rates and Tariffs.

This matter is dealt with beginning at p.136 of Manitoba's printed Submission (Vol. 46, p.8802), the essence of Manitoba's submission being that the class rate structure as it now applies in Canada should be carefully studied with particular reference to recent changes by the I.C.C. with a view to determining whether or not it would be advisable to establish an additional number of classes in Canada at rates lower than the present tenth class rate. Once this has been done Manitoba suggests that all rates which are not included in one or other of the class rates, should be bulked together and handled uniformly in accordance with one set of criteria, i.e., Manitoba suggests that the present distinctions between commodity rates, special rates, agreed charges, competitive rates, etc. should be eliminated and that all should receive the same treatment. It is with a view to implementing Manitoba's submission in this regard that the amendments already filed with this Commission in Vol. 108 of the transcript at pp. 19999 et seq. have been put forward, namely those affecting Sections 328, 329 and 332 of The Railway Act.

(g) Periodic Review of Rate Concessions.

Manitoba's views on this matter are found at p.117 of its printed Submissions (Vol. 45, p.8739) and it is in order that such views may be given effect to that the new Section 325(b) has been suggested.

(h) Review of Commodity Classifications.

This subject is commented upon at p.139 of

Manitoba's printed submission (Vol. 46, p.8816) and it is Manitoba's submission that it would follow as a natural consequence of any increase in the number of classes that the commodity classifications would of necessity require review. It was with this matter in mind as well as the necessity of periodic reviews of rate concessions that Section 325(b) of The Railway Act was drafted as an amendment thereto.

(i) Closer Contact with the Public.

This matter is dealt with at p.140 of Manitoba's printed Submission (Vol. 46, p.8816). Since we have already presented Manitoba's views with reference to the personnel and attitude of the members of the Board of Transport Commissioners, it is perhaps unnecessary to say more on this subject than to mention that at the present time a shipper is required to negotiate with the Canadian Freight Association, an organization composed of railway employees only, in order to obtain a rate that may be necessary to the shipper in order to develop his business. Under such an arrangement the shipper of necessity must rely entirely upon the railways. Notwithstanding Mr. O'Donnell's repeated suggestion that the Board of Transport Commissioners will act quickly on behalf of any shipper who sends them a postcard, Manitoba considers that there is considerable merit in the suggestion that the Board should have on its staff personnel who would be available throughout the country from time to time during the year for the purpose of giving advice to shippers on any problems they may have concerning rates. At the present time it is our understanding that regional board offices are maintained but that they are confined to safety inspection personnel.

THE CHAIRMAN: All right, Mr. MacPherson.

MR. MacPHERSON: Mr. Chairman, in opening may I say that Mr. Cronkite and myself are dividing the argument and arranging the division of the time to the satisfaction of ourselves and Mr. Covert which is very important.

THE CHAIRMAN: All right.

MR. MacPHERSON: I think there is not much time and I think that probably the first few pages of the argument are pages that are not controversial in the ordinary sense of the word, for they deal with the geographic and economic disadvantages more particularly, and I could probably make some headway by getting started with them and probably rushing through them.

THE CHAIRMAN: All right.

ARGUMENT OF THE PROVINCE OF SASKATCHEWAN

MR. MacPHERSON:

Introductory

In commencing final argument on behalf of the Province of Saskatchewan I should first like to express to the Commission the feeling of confidence which my Government has in your Commission. It was gratifying to our Province when the announcement was made that a Commission would be appointed.

A study of the terms of reference embodied in P.C. 6033 makes it clear that an inquiry of broad scope was envisaged by the Federal Government, and one which would appraise particularly the broader economic factors which originally determined railway policy and which have since and will continue to influence it in future.

It was with this basic question in mind that Saskatchewan addressed itself to the task of preparing its Submission. I submit that the Brief of Saskatchewan

deals in a comprehensive manner with the fundamentals of the transportation problem which we have today and proceeds to a main conclusion which, I urge, is the only solution, capable of implementation, which will relieve the prairies of the undue burden for the maintenance of the national transportation system which, due to the impact of the twin Federal policies of Canadian railway construction and customs tariffs has rested and does rest upon that part of the Dominion.

The Saskatchewan Submission, I urge, has stated clearly the effect of National Policies on the Province. The facts have not been successfully challenged and I submit that a compelling case for compensation through a national transportation policy has been clearly made out.

It is hoped that in the argument which you have heard and which will follow much that will be helpful in bringing about desirable changes in the regulatory machinery, the freight rate structure itself, and the organization of our transportation facilities will be urged. The one fundamental fact, though, still remains; that when all possible measures of this nature have been taken, a disproportionate burden of the cost of maintaining the national transportation system of Canada will still rest upon the economy of the Prairie Provinces as a whole and Saskatchewan in particular unless the fiscal device suggested in our Submission and to be argued later is employed.

For the purpose of the record the Saskatchewan Submission in printed form was filed as Exhibit 128 at page 9816, Volume 51 of the transcript. The examination of the Saskatchewan witness, Dr. G.E. Britnell, was commenced at page 9816, Volume 51 and was concluded on

page 10288, Volume 53.

I wish to emphasize in what measure our very location as a province provides vexing transportation problems, and calls for equitable solutions of them. I would remind the Commission that at the hearings in Regina twenty witnesses gave evidence who, in their presentations, truly represented a cross section of the general public of Saskatchewan. Producers and consumers organizations, business organizations and women's organizations, through their spokesmen indicated to the Commission the situation as it exists, and what, in their view, is necessary to ensure a measure of future prosperity for the Province and its people.

We recognize that in the transportation field there are various agencies and that in the last two decades certain of these agencies have made great strides. We recognize that now in the transportation economy, railways, trucks, buses, aeroplanes, pipelines, and water transportation all play a part. Until twenty years ago, apart from water competition, the railways had in transportation service, a monopoly in the hauling of commodities. With the construction of better highways and the development of trucking and buses, and latterly the development of air lines and pipelines, a challenge was offered to the railways in respect of their former monopoly of some types of service. This challenge has been a very real one and has resulted for the railways, in serious consequences.

The railway monopoly of service, has not been challenged in the same degree in Saskatchewan as it has in Central Canada. Located as we are, the long haul to consuming centres and from sources of supply is what concerns us most, and the railways hold their monopoly of service in the long haul today as they did in 1885. Having regard,

therefore, to the changing character of the transportation economy, with new agencies therein serving a very real purpose, it would seem that it is most important to consider what function of transportation the railways can best discharge and to consider it in conjunction with the needs of the population of our Province, which is so vitally dependent upon the long haul function being properly discharged.

Located as we are in the Province of Saskatchewan, we recognize that these export staples upon which we depend for our existence - grain, livestock and livestock products, butter, eggs, etc., and coal, can only be moved to market through the medium of railways. As stated in our Submission, Exhibit 128, the Saskatchewan economy is peculiarly dependent on rail transportation because of distance from markets, a high degree of economic specialization, and the bulkiness of products bought and sold. It has developed a highly specialized, staple-producing economy relying heavily on export markets. As a corollary of this, capital and consumer goods produced locally constitute a small proportion of total requirements, with the result that there is heavy reliance on distant sources of supply. We realize only too well that our country, which is well suited to the raising of livestock because of its open ranges and to the raising of grain is not strategically located with respect to markets and all these export staples must travel over a long haul in order to reach the consumer.

While the latest census figures show our population as 832,000 with 515,000 or 62% as rural, and 316,000 or 38% as urban, it is still true as stated at page 7 of Exhibit 128 that the urban communities of the Province do not represent any essential modification of

the specialization of the provincial economy. These urban communities are primarily and in the great majority of cases exclusively market centres which serve to assemble the farm produce of the region for export and to distribute the merchandise which has been imported from outside the Province. These urban communities are necessary to the farm communities and their prosperity is wholly dependent on the prosperity of the farmer.

We have heard much before this Commission in the past number of months of Canadian prosperity and Western prosperity during the past ten years. These same census figures which are to be found on page 13 of Exhibit 128 show a reduction in Saskatchewan's population of 63,000 from 1941 to 1946 and of 99,000 from 1936 to 1946. As population is vital to the carriers, they, with us, must be concerned at the story which these figures tell and the implications of these figures. For I am convinced that the situation in Canada is not that we have too many railways for our population so much as that we do not have enough population for our railways.

We have urged in our provincial submission, Exhibit No. 128 that the development of East-West economy in Canada was established as a fixed part of national policy before Saskatchewan became an autonomous unit within Confederation, and Canadian railway construction has been an integral part of that National Policy. The main lines of the railways were located in the national interest and with little regard to the questions of economical construction or operation. The burdens of transportation facilities have thereby been immensely enhanced in the interest of economic and political unity. It is of particular importance that these enhanced burdens should not bear disproportionately

upon the various segments of the Canadian economy.

In the building of the transcontinental railways, the fiscal policy of successive governments encouraged East-West trade, and North-South trading was discouraged. Canadian tariff policy has pursued the dual national purposes of fostering Canadian industry and of creating traffic for Canadian railways. To the extent that these purposes have been achieved the residence of the prairie economy have borne a double portion of the cost involved. First, they have been denied access to many of the efficient mass-producing centres of American production for the purchase of their requirements. Second, they have had to pay transportation charges on their purchases for the longer distances from Canadian production centres.

We must accept this situation as a fact. The lines have been laid and the course determined. What has been done cannot be undone, and it is to this situation that a national transportation policy must be fitted.

We live at the freight shed in Saskatchewan. From the western portion of our Province some of our grain and butter moves West: from the eastern portion these products move East, as does our livestock and coal. Our very locale compels our looking to the future with anxiety. Manufactured goods and other necessities must come to us by rail, our products must go out by rail and, consequently, any national transportation policy - particularly as it affects rail, is of vital consequence and interest to us.

As the transportation economy has changed so has the agricultural economy of Saskatchewan. As set out on Page 8 of our Submission (Exhibit 128):

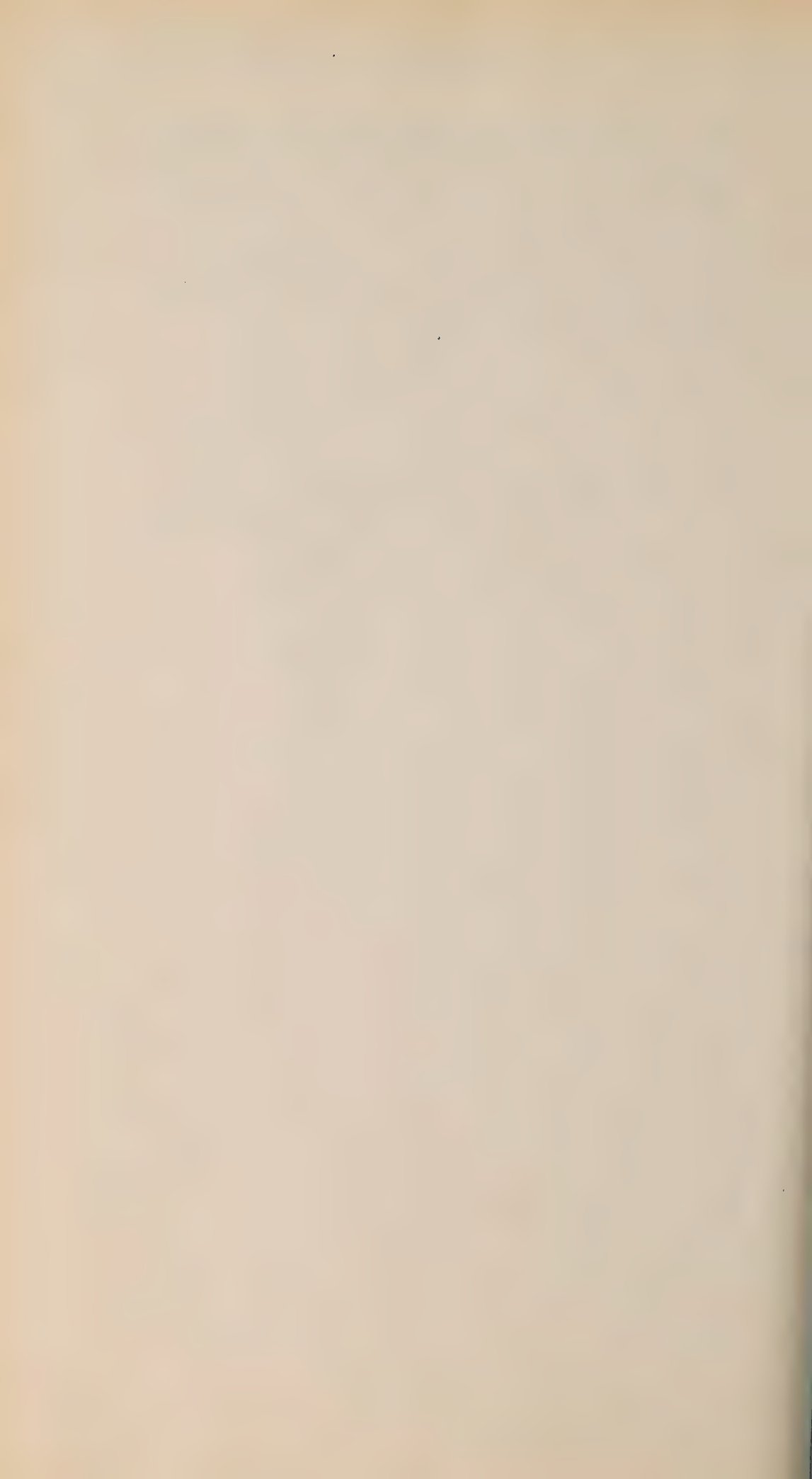
"The technology of the wheat farm has been revolutionized within the past twenty years. Wheat growing has, as it is commonly said, become mechanized. One significant result of the process of mechanization has been to increase greatly the relative importance of transportation in the wheat economy. Revolutionary improvements in the internal combustion engine and in equipment to be so powered have practically displaced horses. This has, in effect, moved labourers away from prairie farms into eastern factories and industrial towns. Farm labour which a generation ago was engaged in raising and caring for western work horses, in driving them in the fields, and in raising vast acreages of feed for them is no longer needed for these purposes. Instead the equivalent labour is engaged in the manufacture of power equipment and tractor fuel and in the transportation of these products from distant centres to the wheat growing region."

It is not my intention to take up the time of the Commission with an extensive review of the details of the economic and geographic disabilities under which our agricultural and non-agricultural economy labours. Evidence of these difficulties was given at the Regional Hearings in Regina, June 7 - 10 and is to be found commencing with page 708, Volume 5, and concluding on page 1439, Volume 8. Further evidence summarizing the submissions presented at the Regional Hearings and expanding upon the economic and geographic disadvantages faced by Saskatchewan is to be found in Part I of the Saskatchewan Submission - Exhibit 128 and generally in the evidence of Dr. Britnell in Volumes 51, 52 and 53. I have pointed out that Saskatchewan stands at the freight shed. The evidence before your Commission I

submit establishes that, having regard to the rates applicable and the direction in which Saskatchewan products must move in order to find a market capable of absorbing them, the Province of Saskatchewan does in a very real, and costly, sense stand, as I have indicated, at the freight shed.

The Commission adjourned at 4.45 P.M.
to meet again Thursday, May 4th, 1950,
at 10.30 A.M.

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ROYAL COMMISSION
ON
TRANSPORTATION

EVIDENCE HEARD ON

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ROYAL COMMISSION ON TRANSPORTATION

Thursday, May 4, 1950

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO
THURSDAY,
MAY 4, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D. - CHAIRMAN

HAROLD ADAMS INNIS - COMMISSIONER

HENRY FORBES ANGUS - COMMISSIONER

G. R. Hunter
Secretary

COUNSEL APPEARING:-

F.M. Covert, K.C.
G.C. Desmarais, K.C.

} Royal Commission on
Transportation

H.E. O'Donnell, K.C.
H.C. Friel, K.C.

} Canadian National Railways

C.F.H. Carson, K.C.
F.C.S. Evans, K.C.
I.D. Sinclair

} Canadian Pacific Railway

J.J. Frawley, K.C.

) Province of Alberta

J. Paul Barry

) Province of New Brunswick

C.D. Shepard

) Province of Manitoba

M.A. MacPherson, K.C.
F.C. Cronkite, K.C.

} Province of Saskatchewan

C.W. Brazier

) Province of British Columbia

Ottawa, Ontario,
Thursday, May 4, 1950.

M O R N I N G S E S S I O N

ARGUMENT BY MR. MacPHERSON (Cont'd)

THE CHAIRMAN: All right, Mr. MacPherson.

MR. MacPHERSON: Mr. Chairman, in our submission, Exhibit 128, we emphasized what at page 9 was termed the wilderness from the Manitoba boundary to Sudbury. The Canadian Pacific Railway sought to answer this by indicating in Part II of their submission at pages 135 to 136 the amount of traffic that originated on their lines between Winnipeg and Sudbury. Mr. Jefferson submitted that the amount of originating traffic was higher than on Prairie lines. However, under cross-examination at pages 15703 to 15713, Volume 78, it appears how true the statement made in our Brief was. In order to secure the originating tonnage which he used in his answer, he included tonnage from Levack, which is in the Sudbury district, and only) 20 odd miles from Sudbury, and which provided 949,000 of the total tonnage of 1,308,000 for the Port Arthur to Sudbury district. This will be found at page 15711, Volume 78.

THE CHAIRMAN: I suppose we can take it for granted that Levack is west of Sudbury?

MR. MacPHERSON: West of Sudbury, yes; it is between. In the evidence, my lord, Mr. Jefferson, as you will remember, did not have a breakdown of commodities so it was necessary to take the tonnage which originated station by station, and Levack was the station from which 949,000 tons originated as between Port Arthur and Sudbury.

He included also in his grand total the tonnage of grain shipped from Winnipeg to the Manitoba boundary, and the road and building gravel shipped from Birds Hill to

Winnipeg. In dealing with Port Arthur and Fort William, he included the tonnage of these commodities which were transshipped from water. When it is further remembered that most of the development in pulp and paper, apart from what has been indicated, took place in the last decade, it will be seen how true our original submission was as to what was done in building through difficult terrain in order to keep trans-continental railways on Canadian soil.

Transportation Act

My first suggestion is that all our legislation dealing with transportation should be consolidated into one statute. The Railway Act should be a part of it. In it should be incorporated the provisions of the Transport Act, the Maritime Freight Rates Act, and any extension of the principle involved therein, and the CN-CP Act. There should be one statute called the Transportation Act dealing generally with transportation in Canada.

THE CHAIRMAN: Does that include air?

MR. MacPHERSON: I do not think so. I considered that, my lord, but I feel that there possibly are circumstances surrounding air traffic which would mean that you could not include it in a transportation act.

For want of a better definition as to what an adequate transportation policy would be, I would suggest this:

"A policy which will give full recognition to the complete and varying economy of our country, which will also give recognition to the function which each branch of the transportation economy serves, and which will provide for the

transportation of commodities on terms fair to the development and prosperity of the country as a whole; fair to the shippers and to the carriers in the matter of service and in the matter of rates or tolls charged."

COMMISSIONER ANGUS: Do you think it means very much to say "fair to the carriers" when the Canadian National Railway really represents that there is no possible standard as to what is fair to it?

MR. MacPHERSON: I think in working out a policy you have got to work out a policy that is reasonably fair to all concerned, and the carriers are very vitally concerned.

COMMISSIONER ANGUS: I was wondering if you would look through the carriers and say fair to the railway shareholders and to the taxpayers of Canada?

MR. MacPHERSON: There might be a distinction drawn there having regard to uneconomic lines which of necessity are carried by the Canadian National and are not carried by other railway companies.

COMMISSIONER ANGUS: Does the taxpayer come in as the person who should be considered when one is being fair, if he has to pay subsidies, for example?

MR. MacPHERSON: Of course, every taxpayer is a shipper in the sense that I use it here. Every shipper is a taxpayer and every taxpayer is a shipper.

THE CHAIRMAN: I notice you do not mention a class that is usually embraced among them, and that is consignees. I suppose what you really mean is carriers and freight payers, whether they pay the freight directly or indirectly?

MR. MacPHERSON: Yes. I think, my lord, the railways use the term "shipper" to include consignee.

THE CHAIRMAN: If somebody else makes a submission of this kind and puts in the word "consignee" --

MR. MacPHERSON: My intention --

THE CHAIRMAN: You do not intend any different?

MR. MacPHERSON: No.

THE CHAIRMAN: That is, the freight rates should be fair to the shipper who sends and to the consignee who receives.

MR. MacPHERSON: When I use the term "shipper" --

THE CHAIRMAN: According to who pays the freight.

MR. MacPHERSON: -- I mean to include consignee. Naturally coming from Saskatchewan it would be that man that I would be concerned with primarily. I take it for the purpose of the definition I have given he is included in the term "shipper".

THE CHAIRMAN: It means fair to the payers of freight and the taxpayers.

MR. MacPHERSON: Yes.

THE CHAIRMAN: And to the carrier.

MR. MacPHERSON: And to the carrier.

COMMISSIONER ANGUS: Is not the basic problem in forecasting the question of how much citizens of Canada are to pay towards the cost of railways in their capacity as shippers or consignees, and how much in their capacity as taxpayers?

MR. MacPHERSON: That is correct, Dr. Angus. The only thing is I think we cannot leave the carriers out of the picture because after all they are providing the service.

THE CHAIRMAN: They are the ones you have to pay.

MR. MacPHERSON: They are the ones we have to pay.

The Board

The Saskatchewan Brief at page 73 deals with the Board and sets forth briefly this Province's suggestions. Under the Transportation Act, the proposed Act, the regulatory Board would function. The administration by the Board would largely determine the success or failure of any adequate transportation policy. The success of such a policy must largely be determined by the success of the Board, the confidence which Parliament and the country has in the Board, the confidence which the carriers and the shippers have in the Board.

Again I use the term "shipper" to include the payer of the freight.

THE CHAIRMAN: Pardon me; you want a Board in which everybody would have confidence?

(Page 21588 follows)

MR. MACPHERSON: That is the objective.

I feel that under the Railway Act as it is at present, subject to suggestions which I will make, the Board has all powers accorded to it by Parliament which are necessary in order that it may function satisfactorily under the proposed new Transportation Act. I feel that under the powers as they exist in sections 32-38 inclusive; 69, 314, 317; 320-322 inclusive; 325, 332, the Board can deal with any problem that affects rates or that affects the railways and the public, and that it has this power without necessity of extending its powers by amendment.

THE CHAIRMAN: You have proposed no amendment.

MR. MACPHERSON: There are two slight amendments, my lord. I would quite agree, as I will come to later, with the suggestion of Manitoba relative to the C.N.-C.P. Act. Then there is a slight amendment that I will come to later in my argument dealing with development lines.

THE CHAIRMAN: The cooperative Act?

MR. MACPHERSON: Yes.

THE CHAIRMAN: You have some amendment?

MR. MACPHERSON: I have no amendment, only I am accepting in principle what was suggested by Mr. Shepard yesterday.

THE CHAIRMAN: Did he propose an amendment?

MR. MACPHERSON: Yes, he did.

The Board should not be a planning board; that must be reserved to Parliament and that is a function that Parliament cannot and should not delegate. While I recognize that the Board has built up a jurisprudence of its own, and in this jurisprudence has decided that it will not proceed on the basis of considering economic elements in an issue, I feel that the powers it has are such that in the proper case it may, and should, give consideration to economic elements

without in any way being a planning board or derogating from the functions of Parliament.

THE CHAIRMAN: You draw a distinction?

MR. MACPHERSON: I am suggesting this. While there are decisions which has been cited to the Commission to the affect that they do not consider economic elements, I am submitting, I would cite a case to the Commission as an instance where they did, in my view, consider economic conditions. I am citing to the Commission in this connection the case of Tariff-Demurrage, which is to be found in 47 Canadian Railway cases.

THE CHAIRMAN: In what? In 17 railway cases?

MR. MACPHERSON: 47 railway cases, my lord.

THE CHAIRMAN: That is volume 47?

MR. MACPHERSON: Volume 47, C.R.C.

THE CHAIRMAN: . . . What year?

MR. MACPHERSON: 1937. It is reported at page 43, and I wish to quote from page 52.

THE CHAIRMAN: What do they say there?

MR. MACPHERSON: I had better indicate what it was about. An application was made by the Canadian Freight Association to impose a demurrage tariff on bulk grain at the head of the lakes. There was no demurrage tariff in force and an application was made to impose such a tariff. The matter came before the Board and evidence was heard in various places. Finally argument took place in Ottawa. In that case the Chief Commissioner, in giving his judgment at page 52 says this:

"I do not desire to leave the impression that what seems unjust and unreasonable today might seem so a year or two years hence under other conditions. But certainly under conditions as they exist today we think it would be unjust and unreasonable to impose this demurrage charge

as asked for in this tariff. Such a charge would be reflected back upon the producer. It might be a small and unimportant amount in dollars and cents, indeed, the individual producer might not realize that he was bearing demurrage charges. But the news would spread that a new burden had been placed upon the grain producer, that new rail charges had been imposed upon the western farmer, who has a hard enough time in recent years... During recent years the railways have suffered tremendously on account of the prevailing depression. So has every industry in Canada, but perhaps the greatest sufferers have been the farmers in the west. Under all these conditions and following the precedent established by the Board in a large number of cases, the Board thinks 'this' tariff should be disallowed."

I am submitting that actually the Board was giving consideration to economic elements there.

THE CHAIRMAN: I suppose in that case those who applied for the tariff asserted that the railways were losing money by this unpaid demurrage?

MR. MACPHERSON: No. In fairness I think I should say that while they were asserting that incidentally, what they were asserting was that there was a shortage of cars; and they were urging that cars were not being unloaded as promptly as they should have been at the head of the lakes.

Consequently they maintained that it was not for revenue purposes. They were not arguing that it was for revenue purposes.

THE CHAIRMAN: It was to liberate cars?

MR. MACPHERSON: To liberate cars. My purpose in citing the ^{case} is to indicate that the Board of necessity could under the existing act give recognition, as I feel they must,

to economic conditions without being termed a planning board in any sense of the word, and that they so held.

THE CHAIRMAN: We shall have to look into the case. But would you say it arose as a result of the railway being obliged to render a service which had to go unpaid, they were asked to fix a rate.

MR. MACPHERSON: There were other issues involved in the case, as to the extent to which --

THE CHAIRMAN: In fixing freight rates, that is what is being done; a tariff is being settled for a service to be rendered.

MR. MACPHERSON: That is correct. The Board was determining what was to be allowed.

THE CHAIRMAN: This would look to me perhaps, as, a result, to be telling these people, "if you do not take those cars and unload them, we will tax you and inflict a sort of penalty on you." is that what it was?

MR. MACPHERSON: Not exactly.

THE CHAIRMAN: On the grounds of inconvenience caused to the railway?

MR. MACPHERSON: Of course it was urged by the railway that it was just and reasonable that a demurrage tariff should be imposed; and the Board held because of economic conditions --

THE CHAIRMAN: Just and reasonable, why? Because of the storage being afforded for nothing in the cars?

MR. MACPHERSON: That was one of the arguments, that the cars were held beyond the two days, and being held for a length of time. My only point in citing the case was to indicate that in deciding what was just and

reasonable, they determined it on economic conditions.

THE CHAIRMAN: What was just and reasonable in regard to freight rates?

MR. MACPHERSON: Yes. It is a freight tariff.

THE CHAIRMAN: Were these freight rates?

MR. MACPHERSON: It is a ^{freight} tariff, yes, for which the application was made.

THE CHAIRMAN: What form did it take? What did the railways ask to have done?

MR. MACPHERSON: They asked that a demurrage tariff be imposed. They filed a demurrage tariff. When the tariff was filed, it was resisted, and the question was as to whether, after 48 hours, there was a demurrage charge per car for cars that were not unloaded, as I recollect it.

THE CHAIRMAN: I cannot help pointing out this consideration. I am just wondering whether this application was made and disposed of under Section 325, I mean, having regard to that section which calls for the fixing and the maintenance of just and reasonable freight rates.

MR. MACPHERSON: I am not sure.

THE CHAIRMAN: We shall leave that, then.

MR. MACPHERSON: I think it was, my lord. I know that case. It was under that special section. I know that the question of justness and reasonableness come in, and in considering the justness and reasonableness, the economic conditions of the day were considered.

THE CHAIRMAN: Yes, I know. You are saying that, by extension, this element should be considered when freight rates are being fixed.

MR. MACPHERSON: Yes. I am arguing that the Board can today, and I am arguing that the Board does today, consider economic conditions.

THE CHAIRMAN: Are you saying that it ought to?

MR. MACPHERSON: I am saying that it ought to, yes.

THE CHAIRMAN: In fixing freight rates?

MR. MACPHERSON: Yes, in fixing freight rates. I am coming to this a bit later, as well.

The Board is an administrative tribunal, although by statute it is a court of record. As an administrative tribunal, the ordinary principle of stare decisis will not apply to its judgments. On this point it has itself declared that it is not bound by previous decisions.

(Page 21596 follows)

Within its sphere of activity it covers the whole range of matters having to do with the railways and there should be no limitation on its powers except where it would seek to function as a planning Board and it could well and must deal with issues that come before it by giving consideration to economic conditions without infringing on the jurisdiction of Parliament.

THE CHAIRMAN: There seems to be some difference of opinion between you and Mr. Shepard. In the previous paragraph you say:

"On this point it has itself declared that it is not bound by previous decisions."

Mr. Shepard said exactly the contrary.

MR MACPHERSON: Well, I do not think Mr. Shepard said that. Mr. Shepard, I think, recognizes that the Board has said that it is not bound, but Mr. Shepard has suggested an amendment to the Act to the effect that it be set out in the Act that it be not bound by previous decisions. We differ in this way, that I do not think it is necessary to set that out in the Act, and he does; he does in this way, that he feels that it is desirable that it be in the Act, although he I think would agree that it is merely declaratory of what is existing law.

THE CHAIRMAN: My recollection is that he went a bit further. However, I will not take time to look it up now.

MR MACPHERSON: In fact it is difficult for me to see how it can properly discharge its functions with its powers as they are without paying attention to certain economic elements. I would suggest an amendment to the Act to make it clear what my views are in this connection, but I feel that any amendment might be misconstrued and might well be taken as giving powers which Parliament did

not intend to give and again I say that with the powers which the Board has under the relevant sections of The Railway Act, and acting as an administrative tribunal it can apply that common sense in its decisions which of necessity would have to recognize economic conditions.

THE CHAIRMAN: Then you do not think it is necessary to amend the Act?

MR MACPHERSON: I do not think it is necessary to amend the Act, no, my lord.

THE CHAIRMAN: Nothing to be done about it.

MR MACPHERSON: Nothing to be done about that.

THE CHAIRMAN: Leave things as they are. Why do you raise the question, then?

MR MACPHERSON: Well, I raise the question because I think that it has been an issue one way or the other in the course of the hearings, and I think that it should be raised.

Having regard to the multitude of duties which the Board may have to deal with, not only in rate making but in abandonments, extensions, regulations, safety, etc., I feel that it might be unwise to cut down the number of members now on the Board. I do not think that it is necessary by legislation to establish the qualifications of members of the Board, other than as now stated in The Railway Act. Every successive Government of Canada should be seized with the tremendous importance of the work to be done by the Board, and fully appreciative of the part that the Board must play in the welfare of every citizen of the country, whether he be a producer or a consumer, and should name to the Board as members men qualified especially to handle the difficult assignment. We feel also that the 10 year term provision should be deleted.

That would require an amendment to the Act, which

I have not put in, but I am making it as a statement of policy.

THE CHAIRMAN: What is the point? That they might hold office under good behaviour?

MR MACPHERSON: I beg your pardon, sir?

THE CHAIRMAN: That they might hold office until seventy-five

MR MACPHERSON: That is it, instead of a ten-year period. I think in a measure there should be an encouragement, perhaps, to younger men to accept appointments to the Board, which in itself would mean that with a ten-year limitation they might be inclined not to consider such an appointment at all.

COMMISSIONER INNIS: Then you disagree with the Province of Manitoba, which has it cut to three?

MR MACPHERSON: Yes. The Province of Manitoba wishes it cut to three, and I say that after discussion, full discussion, we have suggested that the number be kept.

COMMISSIONER INNIS: Don't you think it would be easier to find a small number of people able to measure up to the qualifications you indicate than---

MR MACPHERSON: I think it would, but under instructions that is my submission to the Board.

The Board must have as its advisers---

THE CHAIRMAN: You are arguing, then, that the Board should remain---

MR MACPHERSON: The same number, yes; that is my submission, my lord.

The Board must have as its advisers, capable and eminent specialists as accountants, engineers, economists, rate experts and statisticians; not too many in number, but sufficient in number to properly assess the implications of all issues that come before the Board and to advise the

Board on technical matters in such manner that their judgment in the final analysis may be of best use to the country. I can envisage a small select permanent staff, always busy and always engaged on transportation problems and I can foresee that when important rate cases come before the Board, then it may be necessary for it to temporarily expand its staff of specialists in order that its advice on technical matters may be as complete as possible.

In order that the Board may better discharge its proper function, we are suggesting an amendment to Section 31 of The Railway Act, providing a form of annual report which the Board must make to Parliament. Our proposed amendment reads as follows:

"The Board shall, on or before the thirty-first day of March in each year, make to the Governor in Council through the Minister, an annual report for the year ended on the preceding thirty-first day of December. Such report shall contain,

- (a) a review, for the previous year, of the financial condition and requirements of Canadian railways, the condition of railway property, railway expansion, abandonment of lines, activities of the Board, organization and personnel of the Board, investment of Railway Companies in non-railway investments and business, railway charters, railway leases, ownership and control of Canadian railways, ownership and control by Canadian railway companies of railways in other countries, co-operation between Canadian railways and co-operation and integration with various forms of transport;
- (b) recommendations of the Board as to legislative amendments relating to railways as may be considered necessary in the public interest;

- (c) such other information or recommendations as may appear to the Board to be in the public interest."

Now, Mr. Chairman, in submitting this I am aware of the fact that the Interstate Commerce Commission does make a very full and a very complete report to Congress, and so does the British Transport Board, and these reports constitute in transportation literature something that is very much worth while and something that is a real contribution; and with specialists on the Board such as suggested, such a report to Parliament would not only acquaint Parliament but acquaint the country with problems, and the very fact that it has to be in such a report for the consideration of Parliament would mean that the report would be the result of study and of consideration.

THE CHAIRMAN: Does the Board make no report now?

MR MACPHERSON: It does, it does. Section 31 of the Act requires a report now, but the report now -- I will read section 31 of the Act as it is, my lord:

"31. The Board shall, within two months after the thirty-first day of December in each year, make to the Governor in Council through the Minister, an annual report for the year ended on the thirty-first day of December, showing briefly,

- (a) applications to the Board and summaries of the findings thereon under this Act;
- (b) summaries of the findings of the Board in regard to any matter or thing respecting which the Board has acted of its own motion, or upon the request of the Minister;
- (c) such other matters as appear to the Board to be of public interest in connection with the persons, companies and railways subject to this Act.

2. The said report shall be forthwith laid before both Houses of Parliament, if then in session, and if not in session then during the first fifteen days of the next ensuing session of Parliament."

(Page 21602 follows)

THE CHAIRMAN: Have you examined any of those annual reports?

MR. MacPHERSON: I have read some of the reports, and in my view what is suggested here would be in the nature of what could be a contribution in the sense that is not being done today.

COMMISSIONER ANGUS: In spite of the fact that you have one Transport Act, are you limiting the reports to railways?

MR. MacPHERSON: No, because, you *see* one of the things, co-operation and integration *with* various forms of transport, is the last part of (a) there. I mean, we recognize that the railways will continue to be the most important segment probably of the transportation economy, but my view is that their reports should not, and their efforts and studies should not, be limited simply to railways as such. Otherwise they would not be functioning as a Transportation Board.

COMMISSIONER ANGUS: No, the railways and their activities and other ~~forms~~ of transportation, would you deal with the other forms of transportation independently?

MR. MacPHERSON: Yes, I would. Well, "Co-operation and integration with various forms of transport," that was intended to indicate that the whole field should be covered.

It is suggested that if this amendment is passed, then the Board of necessity must keep in touch with and in contact with transportation matters generally but particularly, of course, having to do with railways. It would mean that the Board would be continuously conversant

in intimate detail with the problems financial and otherwise of the railways. There should be an effort made, in my view, to eliminate the many different entities that exist as separate corporations both in the Canadian Pacific and in the Canadian National System. There should also be a study of legislation in a manner calculated in the public interest to bring before Parliament from time to time such suggested alterations in the law as will be desirable. The necessity for such action will mean that the Board must be constantly alert -- that experts must be constantly on the job and that eternal vigilance must be practised.

I would urge again that the Board in its functioning must largely determine the measure of success which any national transportation policy will have. The Board does not need to be a planning board but it should be an agency competent to acquaint Parliament with trends and development in the transportation economy, and as a result, it can be an agency by which the Government and Parliament are authoritatively and competently advised.

THE CHAIRMAN: In that sentence you have in the last paragraph of page 11 --

MR. MACPHERSON: Yes, my lord?

THE CHAIRMAN: Where you say:-

"There should be an effort made, in my view, to eliminate the many different entities

that exist as separate corporations".

Do you mean separate railway corporations?

MR. MacPHERSON: Well, what I think there is this, my lord, that it will be within the memory of the Commission that in the evidence both of the Canadian Pacific and the Canadian National there is a great structure of independent companies, corporations built up -- subsidiaries and that sort of thing.

THE CHAIRMAN: I see. Do you mean railway companies, only railways, or do you mean other services such as Express?

MR. MacPHERSON: I mean, generally, I mean railway companies particularly.

THE CHAIRMAN: Railway companies particularly?

MR. MacPHERSON: Particularly, yes.

THE CHAIRMAN: That those now in the ownership or control of the main railways should lose their identity in the future, is that it?

MR. MacPHERSON: That is right, my lord. I can see no necessity - -

COMMISSIONER INNIS: You have not any views as to how it should be received by Parliament? There is simply a report to be tabled from the Department of Highways?

MR. MacPHERSON: That is right. The Board is not telling Parliament what it must do, but it is for the information largely of Parliament and to keep Parliament properly advised.

THE CHAIRMAN: Well, that is not at all an unusual thing, but as it is now there is a report.

MR. MacPHERSON: There is a report, and my submission - -

THE CHAIRMAN: You would make it fuller?

MR. MacPHERSON: I would make it fuller, and I would make it such that in my view it would serve a purpose that is not being served at the present time.

COMMISSIONER INNIS: It is not to come before the Railway Committee?

MR. MacPHERSON: Not necessarily.

THE CHAIRMAN: I beg your pardon?

MR. MacPHERSON: It is not to come before the Railway Committee.

THE CHAIRMAN: We can't prevent that. Why shouldn't it?

MR. MacPHERSON: Well, it can, but - -

COMMISSIONER INNIS: But you are not concerned that it should?

MR. MacPHERSON: No.

THE CHAIRMAN: It would have to be submitted to the Minister, and he would put it on the table of the House.

MR. MacPHERSON: That is right.

THE CHAIRMAN: Some time at the beginning of the session when it is available for all members?

MR. MacPHERSON: I haven't the slightest doubt that it will be referred to before the Railway Committee, and it should be, but - -

COMMISSIONER INNIS: I wonder if you have any views as to the efficiency of the Parliamentary Committee. We have not had any evidence on that, and I don't know if it is fair to ask you, but in the written proceedings one is not impressed with the tenor of the discussions.

MR. MacPHERSON: I perhaps might agree with you. I don't know that I have any views to express on it. After all, it is a Committee of Parliament, and Parliament is the highest Court.

COMMISSIONER INNIS: Yes, I know.
NEED FOR CLOSER REGULATION:-

MR. MacPHERSON: The C.P.R. argues that because of increased competition the railways can and should be given a freer hand. "The trend should be towards less rather than more regulation of railways" according to the C.P.R. Brief, Part I, from page 142.

THE CHAIRMAN: What is the Brief talking about when it says that?

MR. MacPHERSON: About regulation.

THE CHAIRMAN: What kind of regulations? You only quote one line out of the Brief. What is the context?

MR. MacPHERSON: I think it is dealing with regulation generally, my lord, page 142.

THE CHAIRMAN: "The proper limits of regulation are a matter of ine balance between necessary protection of the public interest and undue interference in the functions of management."

MR. MacPHERSON: "The trend should be towards less rather than more regulation of railways...."

THE CHAIRMAN: "...because of the increasing strength of other media of transport." That is the reason given.

MR. MACPHERSON: That is the reason given, yes.

THE CHAIRMAN: "The increasing strength of other media of transport competing with the railway industry". That is, apparently, the Canadian Pacific Railway feels that it is somewhat hampered today in



taking action to meet this kind of competition.

MR. MACPHERSON: Yes; well, the C.N.R., as I say, in the next paragraph, has suggested at page 190 of its brief that "the monopolistic position has largely disappeared and with it much of the reason for strict regulation". It is the same idea as the Canadian Pacific has.

We submit that the removal of the railways from their monopolistic position with regard to passenger service and short haul and other competitive freight traffic has increased the need for adequate supervision as protection to the other users of the railways.

THE CHAIRMAN: Adequate supervision over whom?

MR. MACPHERSON: Over the railways,

THE CHAIRMAN: Over the railways. You have in mind competitive rates there, I suppose?

MR. MACPHERSON: Well, yes, as I say later on, my lord.

The protection of non-competitive long-haul traffic is vital to the welfare of the nation and of the railways, and we submit that this traffic (that is, the long-haul traffic) is bearing an undue portion of the cost of railway upkeep. We submit that for this most important and basic traffic the railways still have a monopoly, and more than ever it needs the full protection of the regulatory tribunal.

COMMISSIONER ANGUS: Mr. MacPherson, does that imply that the regulatory body ought to be able to recommend subsidies? You say the non-competitive long-haul traffic is bearing an undue portion. That means that somebody else must bear part of what that traffic is now bearing.

MR. MACPHERSON: That is right.

COMMISSIONER ANGUS: And if the competitive section cannot bear it, where is the regulatory tribunal to allocate the portion of the cost?

MR. MACPHERSON: That is included in an amendment that will be submitted later. Mr. Cronkite is dealing particularly with the question of subsidies, and there is an amendment that is being suggested there, and the Board, as you have suggested, Dr. Angus, is given power to make recommendations.

COMMISSIONER ANGUS: And that is implicit in this part?

MR. MACPHERSON: That is implicit, yes.

Because of their great importance to the national economy, because of the many technological changes taking place in the transportation field, and because of the great corporate power of the major railway companies, there must be more adequate control and regulation of:-

- Individual rates;
- Rate equality, and rate levels;
- Accounting and accounting procedures;
- Non-rail activities of the railway companies;
- Railway financing;
- Expansion and abandonments;
- Co-operation between the railways;
- Integration of the various forms of transportation.

A proper system of regulation involves close supervision of the accounting system, but it is only in comparatively recent years that the necessity for close supervision has become apparent. At present the tendency on the part of the Board of Transport Commissioners is to accept the railways accounts as presented to it and to leave in the hands of railway management the determination of accounting policies and accounting systems.

UNIFORM ACCOUNTING

There appears to be complete agreement between the parties on the need for a uniform classification of accounts and for regulation by the Board. The evidence of the C.P.R. in its Brief at pages 129 and 130 makes this clear and the evidence of Mr. Liddy in Volume 85, at page 16662 stated in evidence;-

"Advantages of uniform procedure are,

in my view, worth the time and effort necessary to achieve."

I would also direct attention to the evidence of Mr. Liddy in Volume 87, page 16962. Question by Mr. Frawley:-

"I think you will also agree that can only be done by the regulatory body promulgating some uniform classification?"

Mr. Liddy answered:

"I think that is the machinery."

I would also refer the Commission to the C.N.R. Brief at page 80 and following pages, and also the evidence of Mr. Cooper, Volume 100, pages 18755 and 18758 which likewise makes their desire for uniformity clear. The various Provincial Briefs are unanimously in favour of uniform procedure.

Saskatchewan proposes the addition of a new Section -- 378A and it reads as follows:-

(1) The Board shall prescribe:-

- (a) a uniform system of accounts applicable to all railway companies and the manner in which accounts shall be kept;
- (b) the method of charging depreciation; the class of property to which depreciation shall apply and the rate of depreciation charges in every instance.

(2) The Board may exempt from the operation of this section any railway company with a mileage of road of not more than one hundred miles.

There appears to be disagreement between the parties on accounting applicable to inclusion or exclusion of express operation, communications and

depreciation. That is disagreement between the two main railways. We believe the Board should make the decision in these cases.

We submit that the Board must maintain a greater degree of authority over the accounting and financial practices of the railways. This should be done through a system of accounting and statistical procedure which might be classified as follows:

- (1) Prescription of a system of uniform accounts;
- (2) Prescription of a uniform policy as to provisions for retirement of plant (depreciation, renewals, retirements);
- (3) Inspection by the technical staff of the Board of the accounting and statistical records maintained by the railways;

(4) A standard form of annual report to the Board (fully detailed)--

THE CHAIRMAN: You mean by each railway?

MR. MACPHERSON: Both railways, yes, my lord. -- fully detailed as to all statistical and accounting forms and available to the public who pay the rates ');

(5) Tests of maintenance and expense levels as to normality.

The results to be achieved through the direction and supervision thus envisaged will be:

- (1) Uniformity of accounts between the years and between the different companies;
- (2) Uniformity of the interpretation of marginal points through periodic rulings of the Board;
- (3) Assurance that the rules of the Board are being followed;
- (4) A standard policy of provision for retirement, co-ordinated with the maintenance policy with which it must be integrated;
- (5) Reliable, factual information available to all interested parties through which normality of the operating accounts for rate making may be regularly scrutinized and measured.

There appears to be general agreement that the classification of accounts should follow as closely as possible that of the I.C.C. We agree with Mr. Liddy that there must be some simplification for Canadian conditions. We submit, however, that there are certain Canadian conditions. which require more extensive treatment than that given by the I.C.C. classification.

Mr. Liddy, and the C.P.R. Brief (pages 110 to 114) listed a number of fundamental differences which cannot be overcome by uniform accounting. We would point out that

these differences are largely in that Company's corporate set up and need not interfere with the comparability of railway operating results as can be obtained from uniform accounting.

At present railway accounts are classified in the following main groups:-

Railway operating revenues;

Railway operating expenses;

Net railway operating revenue;

(Page 21613 follows)

Taxes
Rents
Joint facility rents (debit and credit)
Net railway operating income
Other income
Fixed charges
Dividends
Surplus.

We submit that the Board should interpret the accounting rules and settle the differences between the railways in treatment of special items such as express, communications and depreciation, and that there can be complete uniformity down to the item of net railway operating income.

It may be that the contentious items of express and communications revenues and expenses can be settled by carrying the revenue and expense accounts for these activities in a category below net railway operating income and by then transferring the rail portion (calculated on an approved basis) to an account under railway revenue or expense categories. If the corporate set-up of the C.P. Express Company is to be maintained, it is still a simple matter to carry gross revenue and gross expense into the annual reports in the manner already suggested.

It is our opinion that investment income which is an offset to the cost of joint facility rents (such as Toronto Terminals interest and dividends) should be credited to the credit account for joint facility rents.

THE CHAIRMAN: Pardon me, in the case you mention there investment income --

MR. MacPHERSON: We refer there, my lord --

THE CHAIRMAN: You have one particular thing in

mind, and that is Toronto Terminals.

MR. MacPHERSON: Yes. If you will just follow the sentence through, my lord, you will see that it reads:

"It is our opinion that investment income which is an offset to the cost of joint facility rents" . . .

I am not talking of investment income at this time. I am taking, for instance, the situation in the Toronto Terminals where both railways have a fifty per cent interest in the company. I think the suminvolved by way of return there was \$660,000. The rental paid by the Canadian Pacific is charged properly to working expenses, but the \$660,000 is credited to Other Income. We say that it should be credited to joint facility rents, that type of income.

THE CHAIRMAN: What would be the difference in the result?

MR. MacPHERSON: It would be \$660,000.

THE CHAIRMAN: In what?

MR. MacPHERSON: For instance, the difference in the result would be this. Today the Canadian Pacific show in Other Income a sum in the amount of \$660,000 which is treated as Other Income, and which is not credited to rail expense at all.

THE CHAIRMAN: That is to say, you say this should be considered rail expenditure and income.

MR. MacPHERSON: That is right.

THE CHAIRMAN: And not Other Income?

MR. MacPHERSON: That is right.

We are also of the opinion that the annual reports to the Board should give some detail of joint facility rents debit and credit accounts.

The published annual reports of the railways and the annual reports to the Board have never at any time --

THE CHAIRMAN: Pardon me a moment. How does that affect the suggestion that the Board should decide what is rail and what is non-rail?

MR. MacPHERSON: That is made in the previous submission. We say that in so far as this type of income is concerned there is no such question arising there as arises perhaps in communications, and as arises in express, that in so far as Toronto Terminals is concerned it is purely a rail matter.

THE CHAIRMAN: Then the Board should be directed to treat it in that way? The Board should not be left free?

MR. MacPHERSON: I do not think it should be. I think that \$660,000, when it comes to determine the requirement for the Canadian Pacific Railway that the requirement should be dealing with a specific item, the amount of any deficiency less this item, that it should be treated as a credit.

THE CHAIRMAN: Then you mean by legislation?

MR. MacPHERSON: Well --

THE CHAIRMAN: That is, there is a determination to be made by somebody as to what is rail revenue and what is non-rail. Some have said that should be left to the Board. You would not leave it to the Board?

MR. MacPHERSON: Yes, I would leave it to the Board. My conception of a national transportation policy, as I have indicated, is the strongest possible Board. I do not think there is any necessity for legislation in this connection. I think the Board can deal with it and should deal with it and should deal with

it in this way.

THE CHAIRMAN: It is an intimation to the Board of what you think they ought to do. What do you think we ought to do?

MR. MacPHERSON: I think it is a recommendation that the Commission might make.

THE CHAIRMAN: Another case of admonition to the Board.

MR. MacPHERSON: Yes.

The published annual reports of the railways and the annual reports to the Board have never at any time given details of accounts covering hotels, steamships and other non-rail activities and investment income. These have all been included in the one item of "Other Income." In our opinion, the regulatory board should be in a position to supervise these accounts as well as railway operating accounts.

The question of the regulation of non-rail activities is bound to be a controversial one. It involves two considerations:

- (1) The reasonability of interdepartmental and inter-company charges where allied services are provided by the same management;
- (2) The principle of crediting to rail operations the financial results of activities, both those closely allied to rail operations and those not related.

Because of the first consideration, we believe that the Board must provide some supervision of non-rail accounts. We are strongly of the opinion that the Board should rule as to what non-rail activities are closely allied to rail, and should provide a separate category of accounts for these activities. The new category should be located in the classification

immediately after Net Railway Operating Income but for railway rate-making purposes the result of all accounts should be taken into consideration.

Other income items, not closely related to rail operations, should form a separate category and should be included in the annual report to the Board in some detail. This category of accounts should immediately precede the final general category consisting of fixed charges, dividends, income taxes and surplus. The annual reports prior to the deduction of this final general category would show the result on a basis which would be comparable between the two major railways in that it would show the amount available for corporate purposes.

THE CHAIRMAN: Before you go on, further up on the page you say:

"We are strongly of the opinion that the Board should rule as to what non-rail activities are closely allied to rail" . . .

Is that not a rather indefinite way of leaving it, "closely allied to rail, and should provide a separate category of accounts for these activities"? To give us an idea, would you say that the ownership and management of hotels was closely allied to rail?

MR. MacPHERSON: I think that is an account, yes.

THE CHAIRMAN: Or express companies?

MR. MacPHERSON: Yes.

THE CHAIRMAN: Or in the case of Consolidated Smelters?

MR. MacPHERSON: They would have to make -- yes.

THE CHAIRMAN: You say that is closely allied to rail?

MR. MacPHERSON: There is a question whether it is closely allied to rail.

THE CHAIRMAN: This language leaves freedom for great differences of opinion. You say that the Board should rule as to what non-rail activities are closely allied to rail. They may rule some of these things I have just mentioned in and some of them out. You would be satisfied with them doing that?

MR. MacPHERSON: Yes, but that would not mean that from the standpoint of the corporation what is ruled out must not be considered ultimately in respect to the corporation.

THE CHAIRMAN: Oh, yes, that is a different thing. We are talking now apparently of freight rates.

MR. MacPHERSON: We are talking of accounts.

THE CHAIRMAN: You go right on and say:

"The new category should be located in the classification immediately after Net Railway Operating Income but for railway rate-making purposes the results of all accounts should be taken into consideration."

What do you mean there by all accounts?

MR. MacPHERSON: All accounts of the railways.

THE CHAIRMAN: Whether it is rail --

MR. MacPHERSON: Or non-rail.

THE CHAIRMAN: Or closely allied to rail.

MR. MacPHERSON: Or closely allied to rail.

THE CHAIRMAN: What about Consolidated Smelters then?

MR. MacPHERSON: I submit it has got to be taken into account, my lord.

THE CHAIRMAN: Willincome derived from a source such as that have the effect of decreasing freight rates,

or a lack of income the effect of increasing freight rates?

MR. MacPHERSON: In a sense, yes.

THE CHAIRMAN: This question must be faced.

MR. MacPHERSON: I may say that is a part of the argument that Mr. Cronkite is dealing with particularly. It is being covered. I do not want to evade the issue in the matter. So far as corporation is concerned, so far as the Canadian Pacific, we are in this position, that from the cross-examination of Mr. Liddy it came out very clearly that the company was started as a purely rail company, and ultimately it has developed to the present time where there is naturally a condition of conflicting loyalties as between the corporation on the one hand and the rail on the other. Our submission will be that, having regard to what it was established for, you cannot disregard in the general picture any of the income of the company.

THE CHAIRMAN: You see general terms cannot evade the real issue as to what bearing all these things are to have on the fixing of freight rates. That is the very clear issue. Mr. Cronkite will deal with that?

MR. MacPHERSON: Yes, Mr. Cronkite is dealing with that phase of it. I think probably I should leave it at that, other than what I have said.

We suggest that taxes on income should not be included with real property and miscellaneous taxes, but should be a separate account under the final general category as just referred to. Leased line rentals should be shown separately from fixed charges.

Policing of Rules and Regulations

The Board should not be content merely to lay

down a uniform classification. Provision should be made for interpretation as required and for inspection of accounts by the Board's staff. Uniform classification does not ensure uniformity. Inspection by examiners for the Board does not require detailed audit, but the accounts and records of the railways should be tested sufficiently to satisfy the Board that the rules and regulations are being followed and on a uniform basis by all railways.

We are not suggesting there be a continuous audit of the railway companies by the Board but there should be tests made from time to time so that the Board can be satisfied that the rules and regulations which it has determined are being observed.

One example of interpretation was suggested to us under I.C.C. Regulation -- and this is the kind of thing that would arise:

"Locomotives from a U.S. road were sent to an outside shop for complete rebuilding and the cost was charged to maintenance expense. The I.C.C. inspectors reviewed the charge, because it was considerable, and required the railway to capitalize this expenditure."

That indicates the situation because if it is charged to maintenance then it is charged to the freight payers' dollar immediately, and it is felt that is an example of such an interpretation as the Board would from time to time have to put on the regulations that it itself would set.

THE CHAIRMAN: In this case the power is exercised because the charge was considerable.

MR. MacPHERSON: That is right.

THE CHAIRMAN: And because it was considerable

it was made capital.

MR. MacPHERSON: That is right.

Another reason for inspection of accounts is based on the principle that for rate-making purposes the operating results should reflect only normal operations. Abnormal items should be known to the Board. We understand that the I.C.C. actually requires wasteful or unnecessary expenses to be charged against net income, rather than operating expenses ("Public Utility Economies", by Emerson P. Schmidt, 1940 - , pages 110 and 111). We do not suggest that this is necessary but we do suggest that the Board should be familiar with all unusual items included in operating results.

In the rate cases that have been going on for three years, the Provinces have urged that, included in charges to maintenance there are items which are properly chargeable to capital. I am not going to weary the Commission with details of this argument other than to point out that the Canadian Pacific with less miles of road in 1949 than it had in 1939 actually spent on maintenance account in 1949 \$150 millions as against an expenditure of less than \$50 millions in 1939.

(Page 21622 follows)

MR. MACPHERSON: I think yesterday that it came out that there was \$146 million charged for maintenance account in 1949 but there was also expenditure for deferred maintenance which brought it to over \$150 million. These are round figures. After any allowance that may be necessary is made for increased volume, I submit it will be difficult for the railway to justify the increase from \$50 millions to \$150 millions in the ten year period.

THE CHAIRMAN: Would you think in the future there should be no deferring of maintenance?

MR. MACPHERSON: No. I think that is a proper thing. I am not complaining about deferred maintenance. I think the only argument in the matter on deferred maintenance before the Board is this. There was no complaint as to the deferred maintenance having been taken down as it was during the war years. The argument was as to whether the money should be spent and when by the Canadian Pacific Railway on maintenance. When the rate case started in 1946 there was in the fund a sum of \$25,200,000 and there was continual urging by the province to spend some of this money or to use some of this money of the railways. We are not arguing this now, but the railways submitted good and sufficient reasons in their judgment why the money should not have been spent and the first substantial expenditure was really made in 1949.

COMMISSIONER INNIS: Do you think the railways should be precluded from looking at this problem with reference to long-run difficulties? I suppose that the long period of depression in which they were unable to put aside money or to make expenditures on maintenance possibly necessitated the expenditure of heavy outlays afterwards. Would you prevent the Board from considering these long-run difficulties?

MR. MACPHERSON: Of course, as to the condition of the road at the end of the depression, there is a good deal of difference. I want to be very frank in saying to the Board that the Canadian

Pacific produced a witness before the Board /who said maintenance had not been continued. On the other hand, Sir Edward Beatty, before the Committee of Parliament in 1938 had referred to his road as being a well maintained road. Mr. Armstrong, who gave evidence here the other day, as Chief Engineer, said that the road was well maintained. It needed a little paint, I think was the way Mr. Armstrong put it. In any event, I can see ^{the} position. That was a matter of argument before the Board, as it properly should be. What I am coming to here is this. I am following out my argument as made in much greater detail before the Board, that when you remember there are less lines of roads actually - not much less but slightly less - in 1949 than in 1939, they spent \$150 million as against an expenditure of less than \$50 million in 1939, after an allowance that may be necessary is made for increased traffic volume, I submit that it would be difficult for the railway to justify the increase from \$50 million to \$150 million in the ten year period.

COMMISSIONER ANGUS: Would you say any allowance may be necessary for increased traffic volume and deferred maintenance?

MR. MACPHERSON: The deferred maintenance of course was taken down in the years 1943, 1944 and 1945. I have tried to give both sides of the argument as it was before the Board, but the railway said ^{there} was not proper maintenance up to and including 1939 and we said that there was. Then we come to this \$150 million. Then in my next paragraph I want to refer to the complaint we had, and the necessity for uniform accounting and for this testing.

THE CHAIRMAN: Would you have the Board, in a case of that sort, where they are confronted with a large amount of maintenance, do what the I.C.C. did in the case you gave us?

MR. MACPHERSON: Yes.

THE CHAIRMAN: Require the railway to capitalize the expenditure?

MR. MACPHERSON: Yes, I would require that. That is where the tests would come in. There does not need to be any continuous audit of the books of the railways, but there have to be tests from time to time in connection with certain types of expenditures and to ascertain whether the expenditure that is made is properly chargeable to maintenance, whether it is properly chargeable partly to maintenance, or partly to capital, or how it should be charged.

The Board of Transport in their interim judgment of September, 1949 on this issue said as follows. That was the judgment of Mr. Justice Archibald at the bottom of page 11. He said:

"On the hearing of this application the applicants restated and brought up to date their evidence and exhibits with reference to maintenance costs. I think that these maintenance costs will require further study before any decision can be given, * even assuming that the requirements of the Canadian Pacific Railway are to be accepted as the yardstick for a further increase in freight rates."

The final judgment of the Board came down. The final determination was in March, 1950, and the study which had been considered necessary by the majority judgment in September of 1949, was not even referred to or apparently not even considered.

THE CHAIRMAN: Perhaps it was made, and is to be found in the results. What did the Board do? Did they allow this?

MR. MACPHERSON: No. There is nothing dealing with the situation at all, or no indication of it.

THE CHAIRMAN: What did they do with the accounts?

MR. MACPHERSON: They accepted the railway's figures.

THE CHAIRMAN: They accepted them?

MR. MACPHERSON: They accepted them.

THE CHAIRMAN: Did they accept as maintenance what the railways put forward as maintenance?

MR. MACPHERSON: Yes.

THE CHAIRMAN: How did you know they did not consider that?

MR. MACPHERSON: I can only judge this, as a matter of practice by the Board. In the 21% judgment, or in the argument a point was raised by the Maritime provinces, that under the Maritime Freight Rates Act there was not a change in conditions shown from 1947 to the date of the hearing. It was argued by the Maritime provinces that consequently there could not be this imposition so far as these provinces were concerned.

In this judgment of 1930 the Board indicates that it directed a study and put the study in the judgment. When these studies are suggested, and when they are carried out, then we would expect, as a practice, if it was in the judgment of March 30, 1948, if there was any such study, that it would be in the Judgment of March 1, 1950. But it was not.

The Board will have to propose the type of uniform accounting and see that that accounting is applied in a manner which will make it certain that only those charges are made to the freight dollar each year which should be made, and that the railway is not in a position where, while on depreciation accounting, it will at the same time be proceeding on a renewal basis. There is no justification for high maintenance and high depreciation charges at the same time, and there should be no excuse for high depreciation and at the same time

payment for assets out of current revenue.

That was a large part of the argument before the Board of Transport, and in our view, that ^{with} uniform accounting and the testing of these accounts by the Board, by competent authorities, then you can determine whether what is suggested there is right or whether it is not.

THE CHAIRMAN: I have asked you this before, Mr. MacPherson, but would you tell me again. Are you then submitting amendments to this Act?

MR. MACPHERSON: Yes, my lord. I have suggested an amendment back here farther. I suggested that amendment in connection with uniform accounting, and what I am really indicating now is what should be done under that accounting.

THE CHAIRMAN: Should be done by whom?

MR. MACPHERSON: By the Board. As is set out on page 14 we suggest this amendment:

"(1) The Board shall prescribe:

(a) A uniform system of accounts applicable to all railway companies and the manner in which accounts shall be kept;

(b) The method of charging depreciation; the class of property which depreciation shall apply at the rate of depreciation charges in every instance."

THE CHAIRMAN: Yes, I know that. You say the Board shall do that?

MR. MACPHERSON: That is right.

THE CHAIRMAN: Are you saying that the Board, in doing that, shall bring this principle into operation?

MR. MACPHERSON: That is what I say, my lord, should follow from such an amendment.

THE CHAIRMAN: Who should make that follow? The Board?

MR. MACPHERSON: The Board.

THE CHAIRMAN: You think your amendment would compel the Board to do that?

MR. MACPHERSON: Yes, it would compel the Board to do that.

THE CHAIRMAN: I see. You say that the Board shall prescribe the methods of charging depreciation, the class of properties to which depreciation shall apply and the rate of depreciation charges in every instance. Suppose the Board does not agree with you. What then?

MR. MACPHERSON: Then the Board rules that is all.

THE CHAIRMAN: What is that?

MR. MACPHERSON: The Board is the sovereign body.

THE CHAIRMAN: That is what I want to find out. The Board would decide.

MR. MACPHERSON: That is right.

THE CHAIRMAN: You do not wish it to be made compulsory on the Board to adopt the principle that you set out on page 19?

MR. MACPHERSON: No, my lord. What I am saying is this. When the Board is required to prescribe a uniform system of accounting such as set out, then unless the Board is going to be asleep on the job, it has got to do these things and these benefits will flow therefrom.

THE CHAIRMAN: I see. You rely then on the amendment that you have drafted on page 14?

MR. MACPHERSON: I am relying on the amendment, plus my hope, desire and conviction that the Board will be alert and will apply the uniform accounting in the manner indicated.

THE CHAIRMAN: You do not want any further legislative direction given to them?

MR. MACPHERSON: I do not think so.

THE CHAIRMAN: That is contained on page 14?

MR. MACPHERSON: That is right.

COMMISSIONER ANGUS: Are not all these things tied in together in this way? If you object to high maintenance or high depreciation in years of high traffic volume and big returns, to order to avoid pressure on rates in years of low volume and low returns - if you object to that device - does it not work out that you have to make the allowable surplus bigger in those years?

MR. MACPHERSON: No, my lord. Of course before the Board the argument was, as in part it was before the Commission, as to the matter of the deferred charges, whether it should be straight line or whether it should be on the user basis. We are advocating, and the provinces have all advocated, the straight line rather than the user basis as adopted by the C.P.R.

THE CHAIRMAN: You would leave the Board free?

MR. MACPHERSON: Yes. The Board has to determine that, and whichever they say, would prevail. If they want the user method, then the Canadian National would have to accept the user method. In any event both should have the same form. It is an impossible position, I suggest, at the moment, of one railway using one form and another railway using another form. It should be the same form, whichever it is. If we had the opportunity, we would argue before the Board that in making that determination, as we have argued before them before, that it should be straight line. At the same time, whatever they say would have to prevail. In the matter of high depreciation charges, on the straight line basis, naturally that is more constant. But so far as the maintenance charges are concerned, we agree that the maintenance charges do vary with the volume of traffic to a degree. There is no question about that. They do.

Then Mr. Crump in his evidence before the Board admitted that in the manner of maintenance, that was something that was not like the laws of the Medes and the Persians, something that had to go on. They could change that from time to time, and they did. They do that. But in any event that is an issue that can be decided by the Board, and it comes back to the matter ^{of the board} as a change in the functioning that it must do.

COMMISSIONER ANGUS: Side by side with the physical question, is there not ^{the} financial one too?

MR. MACPHERSON: Yes, there is.

COMMISSIONER ANGUS: That is to say, if in order to stabilize rates, you have a surplus in good years in order to come and go on in poor ones, and then ^{if} you eliminate the little stabilizing device of the character we have been mentioning, would you not have to have a bigger surplus allowed than would otherwise be necessary?

MR. MACPHERSON: I do not know that it would follow. I realize this, as far as straight line and user depreciation are concerned. I realize the fact that purchases are being made now at a time when prices are higher in themselves, and if you are on the straight line method which we advocate, it means the depreciation charges will be higher than they would have been twenty years ago. That is quite true. But at the same time, I do not see how it necessarily enters into the question of surplus. But what we are really getting at is -- and it was a major issue before the ^{board} -- as to whether the maintenance charges were too high, whether there was that being charged which should not be charged but which should be capitalized, or which should be charged to additions and betterments or which should be charged to deferred maintenance. We feel that if the Board were in a position, with uniform accounting, to go in and test, then they might

find that we were all wrong and that the railways were all right. And whatever they did, with a proper test --

THE CHAIRMAN: That is all you are asking for?

MR. MACPHERSON : That is all we are asking for.

(Page 21633 follows)

THE CHAIRMAN: But you seem to be assuming on page 19 that it will be fully in agreement with what you want done.

MR. MacPHERSON: I think they would.

THE CHAIRMAN: You would take a chance?

MR. MacPHERSON: Take that chance.

COMMISSIONER ANGUS: I am sorry for not making my point clear. I was thinking of the stabilization of rates over time, making an award with regard to rates that could be expected to last for some period of time, and it would seem to me that the type of adjustment that was being considered here might be criticized as being a sort of year to year adjustment requiring frequent alteration.

MR. MacPHERSON: No, that was not what was contemplated, sir. Of course, we remember this, that so far as freight rates are concerned, the rates that were applicable in the 1920's were the rates which continued in the 1930's. Even during the depression there was no excepting in the competitive rates as it developed particularly in central Canada with the competition from the trucks. There was no elasticity: they were maintained. Certainly so far as long haul traffic is concerned that was the fact, but we have not contemplated necessarily any - -

COMMISSIONER ANGUS: If you wanted elasticity in the sense of lowering the rates in the 1930's, you would have to build up a bigger surplus during the 1920's.

MR. MacPHERSON: Of course, there might be a fairly long argument there. So far as the Canadian Pacific was concerned the surplus that was built up in

the 1920's was quite substantial, and I think that is on the record. But I don't wish particularly to argue that now, because that starts on another trend altogether, but they did set up a surplus, they did establish a surplus then undoubtedly.

FURTHER FREIGHT INCREASES:-

In submitting evidence in reply to the C.N. plan of recapitalization, Canadian Pacific witnesses clearly set forth that they regarded higher freight rates not only as desirable in the railway interest but as necessary. At page 20446, Volume 112, of the Record, Mr. Northey Jones indicated that the Canadian Pacific should have for its requirements a sum between \$47,500,000 and \$66,600,000. At page 20530, Volume 112, he acknowledged that this sum could be put at \$63 million. If we take this sum of \$63 million, it would mean the necessity of raising a further \$15,500,000 and of course, in this regard provisions would have to be made for income tax. As Mr. O'Donnell put to the witness at page 20592, Volume 113, of the evidence, to produce the \$66,600,000 would result in freight rates being 24% higher than existing levels after being raised by the pending 4% increase. Existing levels were 40.36% above the rates in March, 1948, which would mean that the rates would be 74.04% higher than they were in March 1948, if Mr. Northey Jones' proposal was accepted. What is more, in order to ascertain the rate of return Mr. Jones figured on a base of \$1,001 million which base he takes from Exhibit 49-49, the balance sheet story of C.P. investment and this base the provinces continuously refuse to accept or recognize. To indicate clearly that the other Canadian Pacific

witnesses had the same idea of higher freight rates in mind, Mr. Norman at pages 20642 and 20643 of Volume 113 of the evidence also advocated increased freight rates. And Mr. Liddy, who also gave evidence - -

THE CHAIRMAN: Before you go on to that, you say of that figure of \$1,001 million that "this base the provinces continuously refuse to accept or recognize". Do you mean in both ways, first the accuracy of the figures, and secondly the idea of fixing the rate base - -

MR. MacPHERSON: I am going to deal with rate base later on this morning by itself, but we do say that the \$1,001 million does not represent in any event what should have been taken as the rate base. We have never accepted the 49-49 figure of \$1,001 million but on the principle of rate base we deal with that later at a little length.

The position of Saskatchewan is that in the light of the evidence of the Canadian Pacific witnesses as to the possibility at the present time of increasing competitive rates, the long haul freight and the freight moving in non-competitive areas, on which the railways have a monopoly, must bear an increased burden. Saskatchewan's location geographically involves this long haul freight for which it must pay. We have urged again and again in the course of the Commission inquiry that our Saskatchewan economy could not, without disturbance, stand a further increases. In fact we maintain that the increases already in effect have had serious repercussions. An example of this might be given in what is popularly known as the Horse Co-operative

at Swift Current, an organization which did a very large business and paid very heavy freight charges and whose ability to compete in European markets was neither hampered or lost because of heavy transportation charges. Evidence on this point was given in Regina at page 894, Vol. 5 of the record. To indicate what we believe the true position to be, I would quote the answer given to me at page 20218 of Vol. 110 of the record, by Mr. Fairweather and which reads as follows:-

"Q. Mr. Fairweather, in Volume 65 of the evidence at page 13646 during the cross-examination of Mr. Walker by Mr. Covert a question was asked and an answer given, and I want to read the question as put to Mr. Walker and Mr. Walker's answer and to ask you whether or not you agree with it. This was the question:

'Q. Now, I just wanted to ask you one question on this point. I think an article was read to you this morning by Mr. Campbell suggesting that the railways may be pricing themselves out of business in the United States. My understanding is that your view is that that is not the situation in Canada, that the railways have no where near reached, I think was the phrase you used - -

A. That is my view, yes.

Q. - - a rate level which would price the railways out of business?

A. Quite so.'

"Q. Do you agree with that statement of opinion by Mr. Walker?

A. No, honestly I do not.

Q. Well, will you tell the Commission why you do not agree with it, Mr. Fairweather?

A. Well, I think that the tenor of my evidence explains my doubts and my disagreement. I think when the rate adjustments presently in effect and in prospect before the Board of Transport Commissioners, supposing they were granted in full, are applied, and having regard to this canker of highway transportation which I say is growing bigger, I have a real fear that the productive economy of our country will be disturbed and that marginal producers will no longer be in a position to see enough profit in their operations to produce, and that could easily start a snowballing effect. I am a development officer, and as I have said, I firmly believe that our high standard of living is keyed into the incentive that is present in the producers of our basic commodities. Those basic commodities historically have always enjoyed low rates, and the prospect of increasing the rates beyond the levels that are now in contemplation is something that, as a development man, I look upon with a certain degree of reservation. It is made clear in Mr. Gordon's Brief that there is a fear expressed there looking to the future that the railway might price itself out of the market."

THE CHAIRMAN: Now, have you somewhere a remedy for this? Are you suggesting what we ought to do?

MR. MacPHERSON: Well, the suggestion of course, so far as Saskatchewan is concerned, is the question, as I have indicated already, of subsidy which will be dealt with by Mr. Cronkite.

THE CHAIRMAN: Subsidy to the railways?

MR. MacPHERSON: Yes.

THE CHAIRMAN: That is, you would have us do the economic planning and say that the railways should receive a subsidy on account of your special conditions there?

MR. MacPHERSON: On account of the special conditions that exist. They do not only exist there. I am speaking particularly, naturally, for my own province, the Province of Saskatchewan, but I recognize that the same situation exists in Manitoba. I mean, the disabilities that we suffer are suffered in measure in Manitoba and in Alberta and in British Columbia and the Maritimes.

THE CHAIRMAN: Then, do you want a statutory provision?

MR. MacPHERSON: There is a statutory provision, as I have indicated before, my lord, which will be suggested to the Commission.

THE CHAIRMAN: You have an amendment?

MR. MacPHERSON: Yes, there is an amendment to be brought in. Now, I want to deal with rate base. It is the next subject, and we were discussing rate base.

THE CHAIRMAN: Perhaps before we start we had better take a few minutes.

(Page 21640 follows)

THE CHAIRMAN: Very well, Mr. MacPherson.

MR MACPHERSON: I was just about, Mr. Chairman, to deal with the matter of rate base.

Rate Base

From time to time during the course of the hearing of evidence there has arisen the question of "rate base" and a consideration of the desirability of an established rate base on which a rate of return could be fixed which in turn would establish freight rates. The Board of Transport has never adopted any rate base as such and consequently never been called upon to fix any rate of return. Freight rates have been fixed based on requirements. In the 21 per cent case I propose to give you a discussion between Mr. Carson and the Chief Commissioner Col. Cross, which appears at page 15940. At that page the Chief Commissioner, following a statement by Mr. Carson said:

"You are putting it on the ground of dividends or the preferred stock paid up and dividends on the common stock paid up, at a given rate, rather than to earn a percentage of return on the investment."

Mr. Carson said:

"Yes, Mr. Chief Commissioner.

THE CHIEF COMMISSIONER: And you are making your calculations on the capital stock structure rather than the actual money invested in the railway operations.

MR CARSON: What I did, Mr. Chief Commissioner, was this, I compared the rates of return on the money actually invested in railway property over the years, according to Exhibit 13, as some guide of the adequacy of the earnings today and then I went on ---

THE CHIEF COMMISSIONER: Yes, but in referring to the

amount of revenue which the company may want to meet its requirements ---

MR CARSON: Yes.

THE CHIEF COMMISSIONER: Including dividends.

MR CARSON: Quite.

THE CHIEF COMMISSIONER: You base that on the preferred stock issued.

MR CARSON: Yes.

THE CHIEF COMMISSIONER: And you base it also on the common or ordinary stock issued.

MR CARSON: Yes, that is it.

THE CHIEF COMMISSIONER: The preferred stock at 4 per cent and the common or ordinary stock on a suggested 5 per cent.

MR CARSON: Yes, Mr. Chief Commissioner, and you will remember that in the exhibits which show the requirements, the dividends are always calculated on that basis, 4 per cent on the preferred and 5 per cent on the ordinary.

THE CHIEF COMMISSIONER: Yes."

That was the position in the 21 per cent case.

THE CHAIRMAN: What became of it? Later on you tell us. So far you give us the C.P.R. position.

MR MACPHERSON: Yes, that was the position; and it was on that basis, the basis of requirements, that the Board proceeded in the 21% Case. They proceeded on that basis.

In the 20 per cent case the C.P.R. sought to establish a rate base for the first time. They produced a split balance sheet which was filed in that case as Exhibit 49-49, and which in these hearings is Exhibit 196. To support that Exhibit and the figures given therein, Mr. Gilmer, an auditor of the C.P.R. gave evidence. He was

supported by Mr. Grady, from New York, partner in Price, Waterhouse; Mr. Northey Jones, Dr. Dorau of New York and Mr. J. C. Thompson. The case for a rate base was put in and argued by Mr. A. J. Priest, a distinguished member of the New York Bar. In argument in the 20 per cent case at page 4028, Mr. Priest is reported as follows:

"I submit most earnestly to your lordship and the Board that if this Board follows the precedents represented by decisions of the United States Supreme Court fully approving the practices of our Federal Power Commission; if this Board follows the current practice of the Interstate Commerce Commission; if this Board follows the practice of the British Columbia Public Utilities Commission in the British Columbia Electric Railway Company case to which I referred at some length, then, my lord, the evidence is here."

That is to say, he says, "This is the evidence, here is the rate base, 49-49."

THE CHAIRMAN: He says that in all these cases the respective bodies did act on a rate base.

MR MACPHERSON: Yes; and I propose to show that they did not do that.

THE CHAIRMAN: I see. He is very positive in what he says.

MR MACPHERSON: Well, he is very definite, my lord, yes.

Later in the 20 per cent case at page 4032, Mr. Priest is reported as follows:

"I submit that, in the light of all the circumstances, the Board should find that the Canadian Pacific's rate base as at December 31, 1947, is \$1,001,000,000, which, on the evidence of Mr. Grady and Dr. Dorau, is

the minimum base on which the Company is entitled to earn a reasonable return from its railway operations." The Canadian Pacific Railway sought to establish a base through presenting this balance sheet by Mr. Gilmer, who could testify to the accuracy of the figures only to the effect that they were in the books -- that was as far as Mr. Gilmer could go, these figures were in the books -- and by Mr. Grady who, in his evidence at 2695 of the 20 per cent case, went on record to indicate to the Board that he could not certify as to the accuracy of the figures.

I suggest to this Commission that it is a far cry from the current practice of the Interstate Commerce Commission and of the Federal Power Commission manned as both are with expert engineers, accountants, auditors, statisticians, rate experts, and economists and the Interstate Commerce Commission with a Board of Valuation to the Board of Transport in Canada manned as it is.

THE CHAIRMAN: Does or does not the Interstate Commerce Commission fix freight rates on such a base as---

MR MACPHERSON: Well, I am coming to that a bit later, but the Interstate Commerce Commission actually has on its staff---

THE CHAIRMAN: What do they do?

MR MACPHERSON: Well, I will read you the section later. I am reading the section of the Act later.

THE CHAIRMAN: You point out that they have a staff, that they are better equipped to do such things.

MR MACPHERSON: Yes, that they can do these things.

THE CHAIRMAN: And you tell us later on what in fact they do do?

MR MACPHERSON: That is right.

Mr. Priest referred to the decision of the British Columbia Public Utilities Commission in respect of the British Columbia Electric Railway case. That case is reported in 53 P.U.R. (New Series) at page 438 and it will be seen from the Judgment that the Public Utilities Commission of British Columbia engaged as Commission Accountants the firm of George A. Touche & Co., that it had as a Chief Engineer Mr. W. R. Weston who had associated with him a whole staff of engineers, and further that an actual valuation was made of the property.

THE CHAIRMAN: That is, a valuation of the property.

MR MACPHERSON: Of the property.

THE CHAIRMAN: Not a historic investment test.

MR MACPHERSON: That is right. They had various tests, and they had independent accountants, George A. Touche & Company, and independent engineers under Mr. Weston.

We have mentioned from time to time certain American cases. Smythe vs Ames 169, U.S. 466; the Pipe Line Case 1942, 86 Lawyer's Edition 1069; the Hope Case 68 Lawyer's Edition 602. The Hope Case before the Federal Power Commission is reported at 1944 P.U.R. p. 1 and it shows that the Company claimed a rate base of \$66,000,000; they claimed a reproduction of \$97,000,000; they claimed a trended cost of \$105,000,000 and at page 9 of the Judgment it indicates the Company and the Commission Staff each submitted a report and supplied testimony. Your Commission will note the reliance on "Commission Staff." The Company claimed a cost of \$69,700,000. The Staff indicated costs of \$51,900,000. The books disclosed a cost of \$52,700,000 and at page 10 of the report the following appears and I quote:

"Hope's vouchers, books and records are adequate for examination, analysis and audit. Hope kept complete records of those expenditures throughout its existence so no estimates are required to obtain the actual cost."

Page 44 of the report of the Federal Power Commission reads as follows:

"For these reasons I believe that the rate base should here be the cost of property used and useful in furnishing service, less the actual depreciation and depletion reserves attributable to such property." Actually the rate base was fixed at \$51,200,000 and not at the book cost.

Much has been said as to what the American cases determined in the matter of rate base. Smythe vs Ames to which I referred established that rate base should be determined on reproduction costs. That was decided in 1898. In 1942 the National Gas Pipe Line case that I cited opened the way for regulatory commissions to disregard cost of reproduction as an element of value, and to adopt original costs or prudent investment if they choose. This was a decision of the Supreme Court of the United States. The court said:

"The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the Courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the Commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end."

He is referring there to due process, to the amendments to the constitution, that no person shall have his property taken away without due process of law.

The language implies that the courts will no longer enquire into the methods of valuation used by a commission but will concern themselves only with results. The significance of the decision might not have been fully sensed, because of the use of phrases susceptible of several meanings, had it not been for the interpretation of the decision by Justices Black, Douglas and Murphy in a concurring opinion. To them the decision started 'a new chapter in the regulation of utility rates', and I am quoting now from the decision:

"As we read the opinion of the Court, the Commission is now freed from the compulsion of admitting evidence on reproduction costs or of giving any weight to that element of fair value. The Commission may now adopt, if it chooses, prudent investment as a rate base."

The Hope Natural Gas case was also a decision of the Supreme Court of the United States and Trachsel in his book on Public Utility Regulation published in 1947 page 85 summarizes the effect of this case as follows:

"In the Hope Natural Gas Company Case, decided January 3, 1944, the Supreme Court of the United States has freed the regulatory bodies from hampering court-made rules regarding the fixing of rates. So far as the Court is concerned, the regulatory bodies may adopt 'prudent investment' as the rate base, and bring valuation under exact and continuous accounting control. The exact valuation for a particular utility under this plan consists of the original cost of the properties used in rendering the service, less their depreciation, plus working

capital."

It will be seen that in the United States they have departed from reproduction cost and that while they do give a great deal of consideration, as they should, to the books of the company yet that they do not consider the books as final in any sense of the word. What is used and useful and prudent investment are both elements which must be considered. In Canada some of our jurisdictions such as Nova Scotia determine by statute that the element of prudent investment must be applied and this is all for a very good reason.

THE CHAIRMAN: In connection with what?

MR MACPHERSON: In connection with the establishment of a rate base.

THE CHAIRMAN: By whom?

MR MACPHERSON: By the Public Utilities Board in that province.

Then I give the reason:

In Ex Parte 162 at page 723, 266 I.C.C. the
Interstate Commerce Commission had this to say:-- and they were talking of railways:
"As we said in St. Paul and Puget Sound Accounts, 29 I.C.C. 508, 509 --

'all students of railroad economics are well aware of the fact that, prior to 1907, when the Commission was given real power to control such matters, the accounts of carriers in many cases were influenced more by other considerations than by a desire to reflect the actual facts.'

And in our annual report to Congress for 1908, we referred to --

'the well-known facts that no court, no commission, or accountant, or financial writer would for a moment consider that the present balance sheet

statement purporting to give the "cost of property" suggests, even in a remote degree, a reliable measure either of the money invested or of present value.'

Since adoption and use of the prescribed uniform system of accounts the force of these criticisms has been lessened, particularly as to property acquired or constructed after 1907, but as to the older portions of the railroad properties, the criticism remains valid to a considerable degree."

In the Transportation Act, 1920, Congress, in Section 15a, undertook to set up an elaborate scheme of rate making, the keys to which were (1) a rate base of "aggregate value of railway property" used for transportation service, and (2) a "fair return" to be determined and published by the Commission in terms of a percentage of the aggregate property value as determined by the Commission. The return was to be in terms of net railway operating income, and an initial temporary determination was made by Congress of what would be a fair percentage, $5\frac{1}{2}\%$, with an authorization to the Commission to add an additional $\frac{1}{2}$ of 1%.

That is not the law now, however, my lord.

In 1933 this elaborate statutory scheme was repealed, and the entire rule of rate making is now contained in the following Section 15a of the Interstate Commerce Act:

"(1) When used in this section, the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for

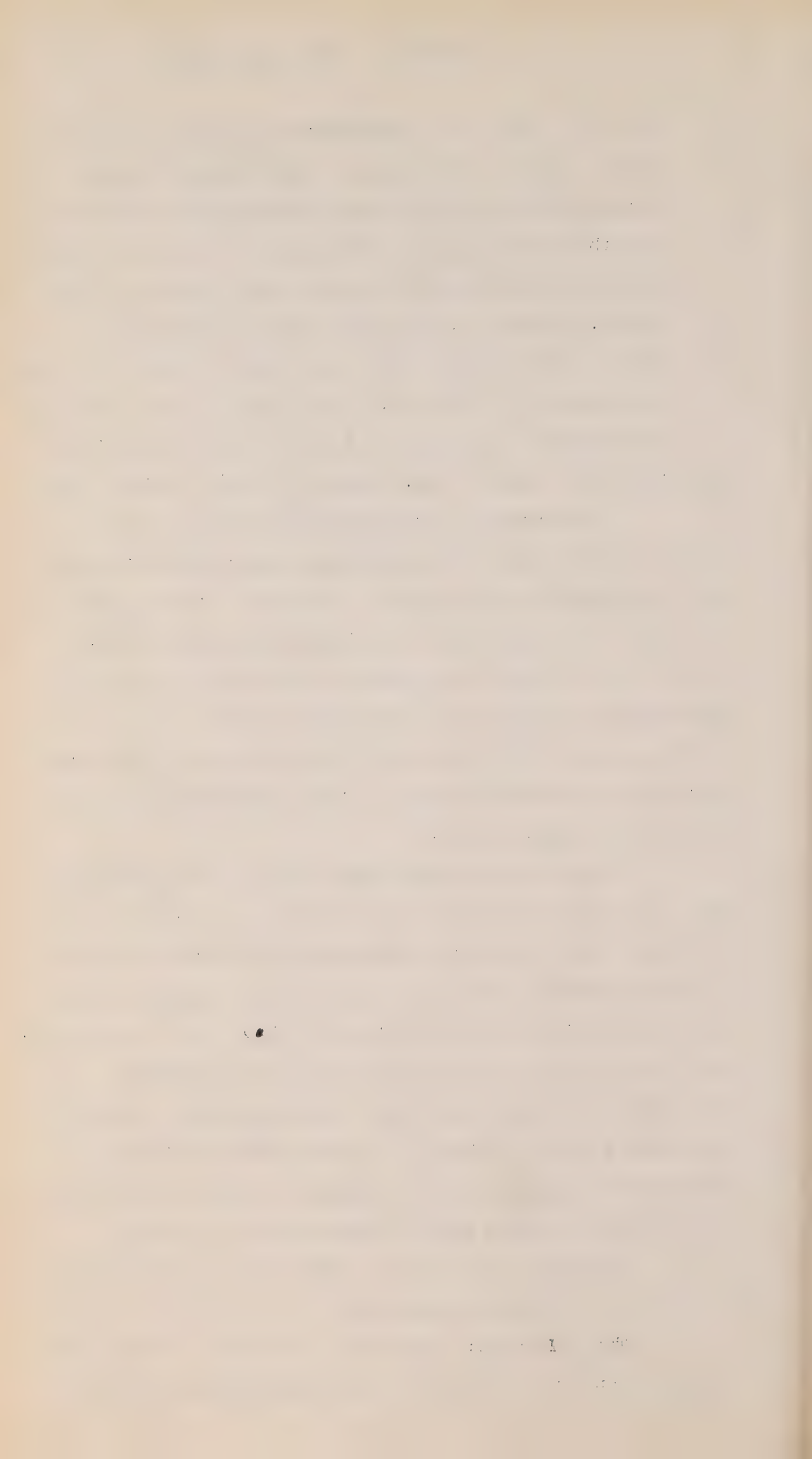
which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. Feb. 4, 1887, c. 104, Part I 15a, as added Feb. 28, 1920, c. 91, 422, 41 Stat. 488 and amended June 16, 1933, c. 91, Title II, 205, 48 Stat. 220; Sept. 18, 1940, c. 722, Title I, 10 (e), 54 Stat. 912.

The important new element added by the 1933 statute is the phrase "at the lowest cost consistent with the furnishing of such service." This was a wholly new criterion for rate making, as will be explained below, and is particularly significant in view of the fact that the two cornerstones of the old rule of rate making -- namely, present fair value, and a percentage rate of return calculated against that value -- were eliminated by repeal from the statutory scheme.

Where the only statutory rule of rate making is that rates shall be "just and reasonable" -- with full latitude to the regulatory commission to decide what rate of return would be just and reasonable, as was the situation in the natural gas field when the Hope case was decided, and as was the situation in the railroad field until recently -- the regulatory body has considerable latitude in fixing a rate of return. In other words, in public utility rate making, there is usually a spread or zone of reasonableness within which a commission may operate.

Now what are we to do about rate base in Canada insofar as railways are concerned?

THE CHAIRMAN: Pardon me a moment. In that last paragraph you say, "Where the only statutory rule of rate



making is that rates shall be 'just and reasonable'" -- that is our rule.

MR MACPHERSON: Yes; and of course---

THE CHAIRMAN: And you say that rule is to be superseded now, do you, by this other statute

MR MACPHERSON: Well, I am referring there to the American---

THE CHAIRMAN: Is that what you are saying, in effect, that the new rule is that service must be furnished at the lowest cost consistent with the furnishing of such service?

MR MACPHERSON: I say that, my lord, to---

THE CHAIRMAN: Does that take the place of "just and reasonable"?

MR MACPHERSON: "Just and reasonable" is in that section too, my lord.

THE CHAIRMAN: Both?

MR MACPHERSON: They are both in that section.

Now what are we to do about rate base in Canada insofar as railways are concerned?

THE CHAIRMAN: You seem to point out that in some cases it is not that way. You say, "Where the only statutory rule of rate making is that rates shall be 'just and reasonable'" -- that is, as in our Railway Act; is that so?

MR MACPHERSON: That is right, my lord.

THE CHAIRMAN: : "With full latitude to the regulatory commission to decide what rate of return would be just and reasonable, as was the situation in the natural gas field when the Hope case was decided . . ."

That would not be the situation today if the Hope case had to be decided again.

MR MACPHERSON: Well, the Hope case was not a railway case; that was a natural gas case; that was a public utility case.

THE CHAIRMAN: Yes. The new provision, the new system, applies only to railways.

MR MACPHERSON: That is right, my lord.

THE CHAIRMAN: You say, then, as the law was when the Hope case was decided, the regulatory body has -- had then, in the case of railways too, I suppose.

MR MACPHERSON: Yes.

THE CHAIRMAN: -- considerable latitude in fixing a rate of return. That is gone now.

MR MACPHERSON: That is gone.

THE CHAIRMAN: That is gone so far as---

MR MACPHERSON: Well, so far as the United States is concerned, it is limited to the lowest cost consistent with the furnishing of such services.

THE CHAIRMAN: Just and reasonable, but at the lowest cost consistent with the furnishing of such services; is that what you say.

MR MACPHERSON: That is right.

THE CHAIRMAN: Is that the formula now?

MR MACPHERSON: That, and the need of revenue sufficient to enable the carriers under honest, economical and efficient management to provide such service. But the new concept which is involved is that that I have quoted and emphasized -- at the lowest cost consistent with the furnishing of such service.

THE CHAIRMAN: I think there is a blending there -- the lowest cost and the need of revenue.

MR MACPHERSON: Yes, there is a blending, my lord, but what I am emphasizing is that there is that new concept in section 15a as passed in 1933, at the lowest cost consist-

ent with the furnishing of such service; that is now a factor which is emphasized in the sense that it was not before.

Theoretically I acknowledge frankly that it seems the reasonable, the proper, the scientific way to proceed in fixing rates. But are we equipped in Canada at the moment to establish a rate base for the railways. We return to this issue that it rests with the Board of Transport and no fixing of rate base should be adopted by the Board until first it is properly equipped with technical help and then after the personnel has had the opportunity of long careful and exact study as to what this responsibility means. Theoretically yes, freight rates should be fixed as a result of an established rate base and an established rate of return. Practically no. Why we have not yet in Canada a uniform accounting system which the railways employ and which is essential before the Board of Transport and its experts can properly assess the situation.

THE CHAIRMAN: Is that the only thing standing in the way of adopting a rate base

MR MACPHERSON: No, that is not the only thing, my lord.

THE CHAIRMAN: You say theoretically it would be the right thing.

MR MACPHERSON: Theoretically I say yes.

THE CHAIRMAN: You say practically no.

MR MACPHERSON: Well, practically no. That is one of the reasons.

THE CHAIRMAN: What about that word "why"? You say, "Why we have not . . ."

MR MACPHERSON: We do not need the "why" in there at all. That can come out.

THE CHAIRMAN: The word "why" should come out; I see. I thought it meant, why?

MR MACPHERSON: I am just indicating that is one of the---

THE CHAIRMAN: "We have not yet in Canada a uniform accounting system which the railways employ and which is essential before the Board of Transport and its experts can properly assess the situation." Now, do I understand from that that if and when the Board is equipped with the proper experts and so on, it would be designed then to set up---

MR MACPHERSON: Well, that is another angle. I do not want to take too long on rate base, and Mr. Smith of Nova Scotia and myself---

THE CHAIRMAN: It is very important.

MR MACPHERSON: Yes, I know. Well, we have divided, and we have discussed---

THE CHAIRMAN: You seem to be conceding the advisability of it.

MR MACPHERSON: I am conceding theoretically the advisability of it. I am pointing out some of the situations that apply that make it most difficult to apply---

THE CHAIRMAN: The result is that we have not in Canada a uniform accounting system.

MR MACPHERSON: That is right.

THE CHAIRMAN: But in your argument you say, set one up.

MR MACPHERSON: No -- oh, yes, I do.

THE CHAIRMAN: Then when you have done that you have taken one step toward the possibility of having this rule of the rate base adopted.

MR PACPHERSON: That is right.

THE CHAIRMAN: And then you say, " . . . which the

railways employ and which is essential before the Board of Transport and its experts can properly assess the situation."

MR MACPHERSON: Yes. That is, if this uniform accounting system is brought into being, then the---

THE CHAIRMAN: And proper experts appointed.

MR MACPHERSON: And if the Board then is equipped as we feel it should be, then they can study the situation on the basis of the uniform accounting and be in a better position to assess it. I am not saying that some day we may not have a rate base. I was just going to add that Mr. Smith of Nova Scotia is going to deal also with this subject, and in order to save time he is going to deal with it particularly from the angle of the difference between railways as a public utility and other types of public utility. While it might be quite reasonable -- and I won't expand or transgress on his field there -- more reasonable to have a rate base with other utilities, it is more difficult with a railway, and particularly a railway such as we have in Canada.

COMMISSIONER ANGUS: Mr. MacPherson, throughout this paragraph you use "railways" in the plural; is the practical problem concerned with one railway, or do you think that a rate base must wait until it can be applied to both the railways?

MR MACPHERSON: Oh, I think you would have to deal with the railways. I mean, we have---

THE CHAIRMAN: Have you said anything yet about yardstick?

MR MACPHERSON: No, I have not said anything about that yet, but, as to that, the question of recapitalization, what is going to happen to the Canadian National, will all come into the picture. I have used the term

"railways" here rather than the singular, keeping in mind that before the Commission at the moment there are submissions in connection with recapitalization of the Canadian National as well, and the effort that is being made to produce comparability.

THE CHAIRMAN: But there must be only one set of rates.

MR MACPHERSON: Only one set of rates.

(Page 21656 follows)

THE CHAIRMAN: Then are you also of the opinion that the Canadian Pacific must continue of necessity and carry on as a private enterprise?

MR. MacPHERSON: We are not urging at all that the Canadian Pacific should cease to exist.

THE CHAIRMAN: What do you want done with it? It is too big a question --

MR. MacPHERSON: Again I do not want to transgress on the argument of Mr. Cronkite. We are trying to divide the work, and if I get off on that it will probably take some time. What we suggest here is whether or not there should be a rate base at all, or whether one can work it for the railways, theoretically I think it seems the neat and tidy way to deal with it, but I do not see how you can deal with it --

THE CHAIRMAN: You are arguing here that theoretically that is the ideal, and that with a uniform accounting system and a board equipped with proper experts it might be possible to bring that around.

MR. MacPHERSON: It might be.

COMMISSIONER ANGUS: Uniformity of accounting seems to contemplate both railways being dealt with.

MR. MacPHERSON: It does.

COMMISSIONER ANGUS: I wondered if the principles you have advanced about valuation were to be assumed as applicable to both railways.

MR. MacPHERSON: Yes, I think you would have to consider valuation.

The Interstate Commerce Commission decision in Ex Parte 162 which I cited above and from which I read is ample authority in this regard. That is, that you cannot accept 49-49. We do not accept it for the

simple reason that it merely reflects the books of the company. For the further reason that on its very face it indicates that the railway wishes a return on donations and grants to the extent of \$78 million on which we urge that there should be no return and further they seek a return on the proceeds of land sales which is an unknown quantity. We only know that in their non-railway enterprises they set up as a land surplus account the sum of \$98 million. There are other items such as the adequacy of depreciation reserves and the capitalized dividends of \$19.5 millions paid out of guaranteed dividend fund and included in the investment total (See pages 17136-7 and 17164-5 and generally my cross-examination of Mr. Liddy in Vols. 89 and 90).

THE CHAIRMAN: Will you permit me to interrupt again? What are the donations and grants to which you refer?

MR. MacPHERSON: The particulars of the donations and grants are that there was \$25 million which was donated by the Government of Canada in the first instance.

THE CHAIRMAN: That the railway received.

MR. MacPHERSON: Yes. There was \$35 million in road and equipment that they took over, and there were cash grants from the various provinces.

THE CHAIRMAN: They put all those things in as part of their investment?

MR. MacPHERSON: They put them in as a part of their investment. The Commission may remember, for instance, the British Columbia Public Utilities case was referred to, and the Public Utility Commission there held they could go into the investment but there should not be any return on it.

COMMISSIONER ANGUS: In view of historic

questions of that character, do you think that a rate base would be better fixed by the Board of Transport Commissioners going into it or by a direct bargain between the Canadian Pacific and the Government as to what should be its rate base as at a certain date?

MR. MacPHERSON: That is possible. I think there would be a great debate and great discussion over what should be in the rate base.

THE CHAIRMAN: You say in the next paragraph there should not be any legislation, that it should be left to the Board.

MR. MacPHERSON: Yes; that is at the present time.

On the question, therefore, of rate base we say to this Commission that not by any amendment to the Railway Act should a rate base be provided. The question of rate base should be left with the regulatory Board. There should be no more responsible agency in Canada. The very strength of that agency; the very independence of that agency; the very ability of that agency should justify confidence in it and in our rate structure on the part of all who are concerned and that includes the carriers, the users and the general public of Canada.

It must be remembered that while we submit that theoretically rate base is proper --

THE CHAIRMAN: Then you have no amendment of any sort to suggest about this?

MR. MacPHERSON: No, my lord.

It must be remembered that while we submit that theoretically rate base is proper we must consider in the matter of rate base for our railways not only the need the country has for railways and the dependence our country has on them but as well the far-flung nature

of our country and the degree to which geographic and economic disability enter into the question of even establishing a rate base. We have the Maritimes with their economy; Central Canada with its favoured economy; the Prairies with their economy different again and British Columbia with its peculiar situation. Frankly, however theoretically reasonable the adoption of a rate base for railways may be and I acknowledge it, I do not think it can be lightly adopted in Canada having regard to the accident of geography, and at any time.

Appeals

I want to emphasize that the Province of Saskatchewan feels that on questions of law, as now, appeals should be taken to the Supreme Court. Likewise, appeals on other issues should be taken, as now, to the Governor in Council. We oppose most vigorously any suggested change in this regard. Matters of transportation are so vitally concerned with broadest economic considerations that it must be the responsibility of the senior Government always to remain the appellate tribunal. The Governor in Council ultimately must make decisions in this regard, and we would oppose as strenuously as we can any suggestion of amendment to the existing methods of appeal.

THE CHAIRMAN: Section 52 which gives power to the Government does not seem to set any principles for the guidance of the Government. They can do anything they like.

MR. MacPHERSON: Yes, that is right.

THE CHAIRMAN: It does not seem to set any principles to guide the government. It says that the Government may of its own motion and so on vary and rescind any order. Have they taken any attitude in

applications before them as to what principles they ought to follow? Have they shown, for instance, in varying, rescinding or confirming, that they take economic considerations into the question?

MR. MacPHERSON: I think I could say yes to that. Of course the latest reference was the one that was referred to yesterday, P.C. 4678. I think that they did take into consideration -- I will check that.

THE CHAIRMAN: It is a question of whether they consider themselves working within the Act and simply doing what the Board ought to have done, that is, fix and maintain just and reasonable rates and so on on the same principles as the Board, or do they just cut loose from all that and say that while these rates may otherwise be justified we are going to change them for reasons of our own beyond the Act, economic reasons, political reasons of any kind. I should like to know what they do.

MR. MacPHERSON: I shall look into the last one particularly and speak to that later.

THE CHAIRMAN: Because you see on the one hand we are asked to recommend that this appeal to the Governor in Council be abolished, and on the other hand we are asked that it be maintained. It would be helpful to us to know how it is being used.

MR. MacPHERSON: I shall check that particularly.

The Freight Rate Structure

Saskatchewan's approach to changes in the freight rate structure as such are dealt with in Part III of Exhibit 128 from pages 75 to 93 and I respectfully commend to the Commission a careful perusal of that evidence. In introducing Part III of our Brief the position was taken that: and I quote from page 75 of

that Submission:

"It is the submission of the Government of Saskatchewan that the handicap under which the people of the Province suffer in relation to heavy transportation charges has largely resulted from national policies which, while perhaps supportable from the standpoint of the nation, have involved a heavy price being paid by this region as a part of that nation. It is likewise the submission of the Government of Saskatchewan that the pattern of railway development has been a part of national policy and that these railways should be considered as instruments of national policy in removing the disadvantages under which the people of this Province suffer."

THE CHAIRMAN: Pardon me a moment. As to the question of national policies, do they refer entirely to the construction of railways, the direction of their construction or do they bring in other things such as the customs tariff?

MR. MACPHERSON: The customs tariff as well.

Historically, it is pointed out in Part III of Exhibit 128 that equitable treatment in the matter of freight rates, in so far as this can be achieved having regard to conditions obtaining in the various regions of Canada, has been the declared objective both of successive governments of Canada and of the Board of Transport Commissioners. While equality has for many years been the declared policy it is nevertheless a fact that in a country as widespread as Canada, with its varying regional conditions, natural and economic, identical treatment may well be

impossible to achieve and, without the most exhaustive study of the actual impact of the many suggestions that have been made, the degree of equality desirable in individual rates is difficult to assess. The ultimate effect on the rates that actually move traffic is, after all, the test which in practice determines the benefit or otherwise of applying any principle which may be enunciated.

The Canadian freight rate structure has frequently been described as a "patchwork." But at page 79 of our Exhibit 128, it is readily acknowledged, ". . . that an apparent patchwork may be the necessary result of actual experience in the competitive commercial world." It is undoubtedly true that the conditions which have brought this situation into being will continue in future and in substantial measure rates which actually move the traffic will continue to assume the character of a patchwork. The principles which will in future govern freight rates in Canada should be directed to ensuring adequate control of what must always be a complex problem.

The assumption is now made explicitly that before this Royal Commission we are dealing with broad principles, and that in due course before the regulatory tribunal an ample opportunity will arise to appraise in specific detail the impact of the implementation of proposals which may be recommended, and if necessary make further representations.

THE CHAIRMAN: Will you just pause a minute there. When you say "the assumption is now made" do you mean you are making the assumption?

MR. MacPHERSON: Yes.

THE CHAIRMAN: It is your assumption?

MR. MacPHERSON: My assumption.

THE CHAIRMAN: "The assumption is now made explicitly that before this Royal Commission we are dealing with broad principles, and that in due course before the regulatory tribunal an ample opportunity will arise to appraise in specific detail the impact of the implementation of proposals which may be recommended, and if necessary make further representations."

I bring you back again to the importance of legislation.

MR. MacPHERSON: There are some more amendments.

THE CHAIRMAN: Because we take it any principles should be made applicable by the Board, and our directions are to suggest amendments to the Act.

MR. MacPHERSON: There are some more amendments to which I will be referring. Generally though I come to this, and perhaps our concept is a bit different from Manitoba's, as presented yesterday, in this regard. Manitoba wishes to have more amendments and to put into the Act that which may be the law today, simply to put the law as declared or as accepted into the Act as an amendment. On the other hand, so far as we are concerned we regard a strong Board as the central organization, and we feel that the powers generally as given now are powers that are wide enough. There are some amendments I will be referring to later, however.

This position is consistent with the statement at page 79 of the Saskatchewan Submission, Exhibit 128, which reads as follows:

"In this section no attempt will be made to enter into an exhaustive discussion of freight

rates as such. Rather, an attempt will be made to indicate objectives and submit some suggestions as to how, in the interest of the Province and of the nation, those objectives may be reached with the greatest measure of equity to all."

It will be noted that the Submission of Saskatchewan gave first and major prominence to the broad economic and geographic approach to the problem before your Commission. The importance which we attach to those factors and the impossibility of adequately correcting them by changes in the rate structure as such led us to suggest that,

"In the opinion of this Province, relatively little can be achieved through modifications of the rate structure as such."

We desire, however, to be of assistance to the Commission in expressing some views on various matters which have arisen pertaining to the rate structure.

(Page 21668 follows)

Equalization

I had better read that, although it is taken from our submission.

Equalization is dealt with in Exhibit 128 at page 79 and following, and I would like to quote these passages.

"It will readily be conceded that the word equality represents a concept of experience rather than of strict logic in the matter of rate making. To carry a ton of diamonds for the same total as a ton of coal might seem quite equitable when viewed superficially but it simply would not work in a practical world of commerce. Hence the concept of classes has been introduced into all rate structures. When classes have been introduced to the reasonable satisfaction of all, other complicating factors arise such as regional costs and competing agencies. As a result the whole business of freight rates becomes complicated indeed and it will readily be admitted that an apparent patchwork may be the necessary result of actual experience in the competitive commercial world.

"It has, nevertheless, long been the contention in the western region that as between East and West there has not been an equality in the matter of railway freight rates. More specifically it has been alleged that rates are higher in the West than in the East and that there is no reasonable ground on which this differential can be justified. This complaint is made without reference to

national policies on the basis of which special relief for the Province of Saskatchewan will be asked.

"The Canadian freight rate structure embodies different scales of standard rates serving as maxima in different regions of the country. These differences are also reflected in various class rate scales. The relationship between these rates in the various rate zones is not consistent, since inconsistencies appear both with reference to classes and to lengths of haul. The reasons underlying this situation are not clear. An appraisal of the actual degree of inequality introduced in one region compared with another would require complete knowledge of the traffic moving on these rates, but that the relationship is unfavourable to the West seems apparent from the pronouncements of the Board in the past. Departures from class rate scales are so common, however, particularly due to the force of competition in the East, that equalization of class rates, although to be desired, would not bring about uniformity of effective rates. It would achieve uniformity of ceilings and place shippers and consignees moving traffic on these rates on an equality of treatment. As a principle, however, a uniform class rate structure has at least the virtue of simplicity to commend it."

I will not take the time of Commission in reading the whole of that part of our Brief headed "Equalization." It begins on page 79 and continues

to page 84 of our Brief, Exhibit 128, and I commend this to the attention of the Commission.

While we say that exact equalization would be desirable we quite realize how, in a practical way, it may be impossible to achieve.

Town Tariffs and Distributing Rates

We recognize that Town Tariffs as they are called and as they have existed in Schedule A since 1907 constitute a part of the freight rate structure in Eastern Canada which will have to continue. After 1907 the Schedule A scale was extended to include Western Ontario territory. We appreciate the fact that the relevant rates in Western Canada are Distributing Class Rates. The same principles behind the Town Tariffs were employed but there is a distinction which has existed between the two forms of rates and which is to the disadvantage of Western Canada. This distinction we suggest should be removed. That is to say, as it is possible to apply the same rate between points in Eastern Canada under the Town Tariff idea, so it should be possible in Western Canada to apply rates between points and not from one point.

THE CHAIRMAN: Is this question still a contentious one?

MR. MacPHERSON: Yes.

THE CHAIRMAN: Between the provinces and the railways?

MR. MacPHERSON: Between the provinces and the railways; yes, my lord.

This has been a matter of complaint in Western Canada for a long time and one that should be corrected without delay and one that is easy of

correction by the railways in the interests of uniformity.

Classification

The infinite variety of commodities that may be transported by rail are divided in ten groups or classes. In the very nature of things in the freight rates structure, there has developed side by side with these class rates, or classification rates, another type of rate known as the commodity rate. It is our suggestion and our recommendation that the number of classes or classifications be extended and that a number of rates now known as commodity rates be recognized as class or classification rates. In this way, down through the standard mileage class rates, the distributing class rates and the special class rates, there would be recognized an enlarged number of classes and this again is something that does not require amendment to the Act and which requires action by the Board.

Competitive Rates

In Eastern Canada from the earliest days water transportation exerted competitive pressure on rail rates and consequently the necessity arose for the early institution of water competitive rates. In the last twenty or twenty-five years, new forms of competition entered the picture in trucks and buses. Generally speaking, no effort was made to compete in passenger service with the buses. The railways took their loss on passenger traffic; it became an accepted principle of railroading that passenger losses were inevitable, and must be recouped from freight. In

freight movements, however, the railways sought to meet the situation, and in the thirties there was a wholesale cutting and slashing of rates in order to hold the traffic, and that slashing and cutting of rates took place chiefly in Central Canada, where truck competition was keenest and where the highways were the best. Pickup and delivery privileges were extended in an effort to hold the traffic from the trucks. Express rates were also cut to the point where in Central Canada in many instances they were less than l.c.l. freight charges.

competitive rates were low to start with and while they bore the 21 per cent increase, and while in many instances they also bore the impact of a further 15 per cent increase, they have yet to bear the impact of either the 8 per cent interim increase or the 16 per cent final increase.

The position of this Province with respect to competitive rates is clearly set out in our Submission, Exhibit 128, at pages 84 to 88 inclusive and further comments appear on pages 89 and 90, and I would ask the Commission to review those pages.

We do not suggest, we have never suggested, that competitive rates can be abolished, but we do suggest that competitive rates must be more rigidly controlled and that the continuance of each competitive rate must be the subject of investigation by the Board. We are consequently suggesting the following amendments as a new Section 332 of the Railway Act.

By it we are suggesting a competitive rate, when the rate is filed, that it be in force --

THE CHAIRMAN: Had you not better read your amendment, Mr. MacPherson, because that is important.

MR. MacPHERSON: Yes. It is as follows:

- "(1) Competitive tariffs shall be filed by the Company with the Board and every such tariff shall specify the date of the issue thereof and the date on which it is intended to take effect and the Board shall, immediately upon filing, investigate to determine if such tariff is a proper tariff, and if it so finds the tariff shall be continued, otherwise such competitive tariff shall expire thirty days from the date of issue thereof.

THE CHAIRMAN: They would go back and apply the competitive rates now in force?

MR. MacPHERSON: That is in the second part which reads:

- "(2) The Board shall review all competitive tariffs now in force to determine whether or not all such tariffs are proper tariffs within the meaning of this Act and such review shall be completed by the first day of January, 1952. Any tariffs found not to be proper tariffs shall be forthwith cancelled."

THE CHAIRMAN: 1952?

MR. MacPHERSON: Yes. That is, there shall be a review of all tariffs.

THE CHAIRMAN: Yes. But immediately, as soon as your amendment becomes effective, the railways no longer use the competitive rates until they have first been approved by the Board.

MR. MacPHERSON: They could file the rate, but the rate is only subsisting after thirty days after it

was examined by the Board; yes, my lord.

In doing this, we quite realize that under Section 34 the Board of Transport Commissioners has power now to pass regulations which would enable it to do what we suggest must be done.

THE CHAIRMAN: This is one case where you are not prepared to control the Board --

Mr. MacPHERSON: Yes; we depart here.

THE CHAIRMAN: -- and make it compulsory?

MR. MacPHERSON: That is right.

The Board has not seen fit to do this, and that being so we feel that provision must be made in the statute and further that there be a review within a reasonable time of all existing competitive rates.

THE CHAIRMAN: Would you pardon me a moment? Your amendment would tell the Board to investigate and determine if such tariff is a proper tariff.

MR. MacPHERSON: Within the meaning of the Act.

THE CHAIRMAN: Just and reasonable?

MR. MacPHERSON: Just and reasonable; yes, my lord.

THE CHAIRMAN: How far would they go? Would they take into consideration whether it is compensatory or not, whether it has a tendency to increase or to keep up freight rates in other parts of the country where there is no competition? Would they consider all that?

MR. MacPHERSON: I would think so.

THE CHAIRMAN: Do you think your amendment provides for that? You just say, "investigate to determine if such tariff is a proper tariff."

MR. MacPHERSON: I think so.

THE CHAIRMAN: You think that is enough?

MR. MacPHERSON: I think so, my lord.

THE CHAIRMAN: That is very loose wording to use in legislation, "a proper tariff".

MR. MacPHERSON: I know it is.

THE CHAIRMAN: Just as soon as you start to legislate in that way, you must have some interpretation of the word "proper".

MR. MacPHERSON: I realize that.

THE CHAIRMAN: What would you say?

MR. MacPHERSON: When you try to expand it, you come back, first of all, to what are just and reasonable rates.

THE CHAIRMAN: If it only means that, that is all right.

MR. MacPHERSON: It is what is just and reasonable.

THE CHAIRMAN: Yes; the objection we have heard so far to these competitive rates is that they have an unjust bearing -- an indirect one, perhaps -- on shippers in localities where competition does not exist and the rates do not apply. That is the fact, is it not?

MR. MacPHERSON: That is right, my lord.

THE CHAIRMAN: Do you think you are covering all those considerations by saying, "to determine if such tariff is a proper tariff"?

MR. MacPHERSON: I thought I had because of my conception of what the duty and the powers of the Board were. But I can see the force of what your lordship has said.

THE CHAIRMAN: If you had said, "investigate to determine if in the public interest such tariff should be allowed to become effective", then you would

have something more nearly in line with what you have in mind.

MR. MacPHERSON: Yes.

THE CHAIRMAN: But simply to say whether it is "a proper tariff" is somewhat loose.

MR. MacPHERSON: I had probably better redraft it.

THE CHAIRMAN: I think you had better look at it again.

MR. MacPHERSON: I want to refer to something which Mr. Evans called my attention to this morning and I forgot to mention it the very first thing. That is with regard to a reference I made -- what page was that, Mr. Evans?

MR. EVANS: On page 20.

MR. MacPHERSON: On page 20, my lord, I had referred to the increase, where I was referring to Mr. Northey Jones' evidence and to an increase of 74.04 per cent.

THE CHAIRMAN: Let us get that.

MR. MacPHERSON: It is at page 20.

THE CHAIRMAN: Yes. The particular portion reads:

"Existing levels were 40.36 per cent above the rates in March 1948, which would mean that the rates would be 74.04 per cent higher than they were in March 1948, if Mr. Northey Jones proposal was accepted."

That is, by using those figures that he gave here?

MR. MacPHERSON: Yes. The complaint was as to one word that was used there. Mr. Evan's complaint was the one word that was used there would result in the freight rate being 24 per cent higher than existing

levels "after" being raised by the pending 4 per cent
the "after"
increase, and that/should be "before". I think that
is correct.

THE CHAIRMAN: Instead of "after"?

MR. MacPHERSON: Yes, instead of "after".

THE CHAIRMAN: Would be 24 per cent higher
than before being raised?

MR. MacPHERSON: That is right. I think that
is correct.

THE CHAIRMAN: We shall adjourn now.

---The Commission adjourned at 1.00 p.m. to meet again
at 2.45 p.m.

Ottawa, Ontario,

Thursday, May 4, 1950.

AFTERNOON SESSION

THE CHAIRMAN: I believe we were to hear from you, Mr. Cronkite.

MR. F. C. CRONKITE, K.C.: Mr. Chairman and members of the Commission:

INTRODUCTION

In continuing the argument for the Province of Saskatchewan, I wish first to make a brief statement regarding the fundamental position taken by the province. This may involve a repetition of some things said by Mr. MacPherson. In so far as there is a repetition it will emphasize just how seriously we regard this part of the argument. To the Government of Saskatchewan, the position of the railways as a part of national policy in the past, and as an instrument of national policy in the future, is very fundamental.

By its terms of reference this Royal Commission is charged with the investigation of "the effect, if any, of economic, geographic or other disadvantages under which certain sections of Canada find themselves in relation to the various transportation services therein." In its various appearances before the Commission, the Government of Saskatchewan has urged the supreme importance of a consideration of the National Policy in such an investigation. It is the opinion of the Province that the disadvantages of the Prairie Provinces in relation to their transportation facilities can not be determined or appraised without reference to the historical framework of the National Policy within which the Canadian economy and its various parts have developed. It is the further opinion of the Province that a consideration of the National Policy provides information on which to base

measures for the removal of the transportation disadvantages of the Prairie region.

The National Policy

While the "National Policy" in Canada ordinarily refers to Macdonald's policy of protective tariffs, such usage must be attributed to historical accident. The National Policy which evolved in the quarter century after 1850, and which eventually embraced protective tariffs as an important element, had as its central purpose the creation of a North American nation, a second trans-continental North American territory possessing unity and economic integration. The plan was visionary. Its raw materials were most unpromising, comprising as they did a group of territories scattered from coast to coast, with vastly differing degrees of political development and with little in common other than their association with the British crown.

In none of its appearances before the Commission has the Province of Saskatchewan raised any question of the wisdom or otherwise of the National Policy. Nor does it do so now. The Province at this point is only concerned to recapitulate the main outlines of that Policy and to impress upon the Commission once again the main implications of that Policy for the Prairie economy.

Politically and economically the National Policy was primarily defensive. The basic choice for the British American territories a hundred years ago was between survival as British territories and absorption by the United States of America. The expansive vigour of that nation, that is the United States, was rationalized at that time as a manifest and providential destiny to absorb the remainder of the continent. In the words of an American editor, written in 1846, the American claim to Oregon and

all of the rest of North America was based on "the right of the manifest destiny (of the United States) to over-spread and to possess the whole of the continent which Providence has given us for the development of the great experiment of liberty and federated self-government entrusted to us." (As cited in Weinberg, A. K., Manifest Destiny, p. 145).

Individually, the British American territories could not avoid absorption. United, they might, on two conditions: first, that the union would foster the maximum economic development and integration of territories already partially developed; and second, that new areas of economic development might be found and closely integrated with the old. The British North America Act provided the political union. The Intercolonial and Pacific railways, and the protective tariff, offered the prospect of economic development and integration within the union. In order to further the purposes of political and economic defence, both the Intercolonial and the Pacific railways had to be built exclusively through Canadian territory, and the Pacific railway had to be built : not too distant from the international boundary.

These facts, we respectfully submit, are of the utmost importance for an appraisal of the economic disadvantages of the Prairie Provinces. Geographic location and narrow specialization of resources render the economy of the Prairie region peculiarly dependent on transportation facilities. The regional absence of an effective measure of road and water competition leaves the Prairie Provinces without adequate safeguard against an inequitable allocation of the national burden of transportation costs. But national transportation costs were originally and lastingly enhanced by the insistence that there should be a national transport-

ation system and a nationally integrated economy.

The Province of Saskatchewan does not argue that, without the National Policy, Canadian railways and Canadian trade routes would, literally, run north and south. With or without the National Policy the Prairie Provinces would trade with the industrial regions of the East, with Europe and with the Pacific region. Nevertheless, it was National Policy which directed the location of the transcontinental railways to the north of the Great Lakes and through a thousand miles of unproductive territory. It was National Policy which directed the first Canadian transcontinental railway across the semi-arid prairie plains and through the difficult southern passes of the Rocky Mountains.

Protective tariffs constitute another integral part of the National Policy with regional effects which show pronounced disparities. Canadian tariffs have denied to the residents of the Prairie Provinces the advantages of buying in the low-cost, mass-production industrial areas of the United States. Canadian tariffs have forced them to buy the more expensive Canadian manufactured goods and to pay the freight on what is in many cases a longer haul over Canadian railway lines from the Canadian sources of supply.

THE CHAIRMAN: That is no longer true of farm implements, is it?

MR CRONKITE: Not within the last few years, sir. It has been ameliorated, I am glad to say.

As Producers, the people of the wheat economy have higher and more rigid costs of production as a result of tariffs. As consumers, they similarly have higher and more rigid costs of living.

Canadian tariff policy has pursued the dual national purposes of fostering Canadian industry and of

creating traffic for Canadian railways. To the extent that these purposes have been achieved the residents of the prairie economy have borne a double portion of the cost involved. First, they have been denied access to many of the efficient mass-producing centres of American production for the purchase of their requirements. Second, they have had to pay transportation charges on their purchases for the longer distances from Canadian production centres.

Now I should like to turn, again as a foundation to the main argument which I shall advance, to the evolution of transportation.

The Evolution of Transportation

So much for history for the moment. National policy, as a part of the history of the past century, combined with the accident of geography, has placed the people of the prairie provinces under a very serious handicap in matters of transportation. This must be strongly urged on behalf of the Province of Saskatchewan, and it must also be urged that the evolution in transportation methods promises to put us under a greater handicap in the future.

A brief examination of the present situation and of the probable future, gives room for prophecy that the future of railroading will not likely be a very happy one unless drastic action is taken; and that the difficulties facing the railways could operate by way of imposing a greatly enhanced burden on the Province of Saskatchewan.

If we go back to the last century we find a situation in which, apart from short hauls with horse-drawn vehicles, the only effective competition to the railways in the transportation field was by water. Railways had a virtual monopoly in the transportation of freight and passengers. During the present century, however, the transportation

industry has been revolutionized by motor truck competition and more recently by the airplane and oil pipe lines. Recognition of this increased competition has been implicit throughout the hearings before this Commission and within recent weeks striking admissions of the altered position of the railways as carriers of freight have been made by witnesses for each of the two great railway systems in Canada.

At page 18035-6, Volume 95, in Mr. Covert's examination of Professor McDougall, a witness for the Canadian Pacific Railway, the following passage appears:

"MR COVERT: Q. At the very bottom of the page -- and this is the last matter I want to deal with with you, Professor McDougall -- you say:

'Comprehensive regulation was one thing when railways had a monopoly of land transport; it loses much of its justification when railways are exposed to competition on all their high-grade traffic.'

I just wanted to find out if you are of the view that they are exposed to competition on all of their high-grade traffic?

A. 'All generalizations are false, including this one.' There must be some high-grade traffic on which they are not, but it is narrowing all the time."

THE CHAIRMAN: You mean on which the railways are not exposed to competition?

MR CRONKITE: Apparently, tying that up with the previous part. That is, he said before, "exposed to competition on all their high-grade traffic." In the second statement apparently he thinks there may be some places in which that does not occur.

On behalf of the Canadian National, Mr. Fair-

weather, a Vice-President of the System indicated at page 20218, Volume-10, that truck competition had almost reached the stage of a disease when he referred to the "canker of highway transportation."

It is apparent that competition by rival carriers has been of significant volume for many years and at the present time this competition is regarded by the railways as a very serious threat. It is submitted, however, that competition in the future will be much more serious, and I think that has been indicated throughout the hearings. It may be that the real troubles of the railways are only just beginning both in the freight and passenger fields, and it is very intimately connected with that matter that I wish to speak of the position of Saskatchewan.

Unfortunately reliable figures are not available as to the volume of freight carried by trucks or passengers carried by buses. Figures compiled by the Dominion Bureau of Statistics are obviously incomplete due to the fact that only a portion of the carriers report and a variable number from year to year. It is submitted, however, that the number of registered motor vehicles in Canada is of extreme significance. The registrations are submitted herewith, by five year periods from 1905 to 1945 and then yearly to 1948.

It will be noted, of course, from 1905 the total has jumped from only 565 to 2,034,943 in 1948; and the commercial vehicles from 1940 to 1948 have more than doubled, almost exactly doubled, in number -- 252,000 and 504,000.

REGISTRATIONS OF MOTOR VEHICLES

<u>C A N A D A</u>				
<u>Year</u>	<u>Passenger Cars (1)</u>	<u>Commercial Vehicles</u>	<u>Motor Cycles</u>	<u>Total(2)</u>
1905	553	---	---	565
1910	5,890	---	55	9,158
1915	60,688	533	5,412	95,284
1920	251,945	22,310	8,195	408,790
1925	641,186	74,938	7,924	724,048
1930	1,055,514	167,548	9,427	1,232,489
1935	989,744	175,888	10,484	1,176,116
1940	1,234,637	252,813	13,379	1,500,829
1945	1,160,058	322,829	14,194	1,497,081
1946	1,234,006	371,294	17,163	1,622,463
1947	1,370,173	439,657	26,129	1,835,959
1948	1,496,784	504,220	33,939	2,034,943

(1) Includes taxis.

(2) Some of the provinces reported totals only prior to 1923.

Source: Dominion Bureau of Statistics, The Motor Vehicle, 1948, Table 1.

It is submitted that every registered vehicle is a competitor of the railway, whether a pleasure vehicle or a commercial vehicle. The increase in recent years has been significant indeed. In particular the doubling of the number of commercial vehicles between 1940 and 1948 should be noted.

Not only has the number of competing motor vehicles increased but of even greater significance is the extension and improvement of highways on which these vehicles may move with greater speed and with heavier loads. The accelerated allocation of public funds for the construction and maintenance of highways appears in the following computations for the years 1930, 1935, 1940, 1945, 1946, 1948 -- taken from Government sources, which appear on page 55. (Page 21690 follows)

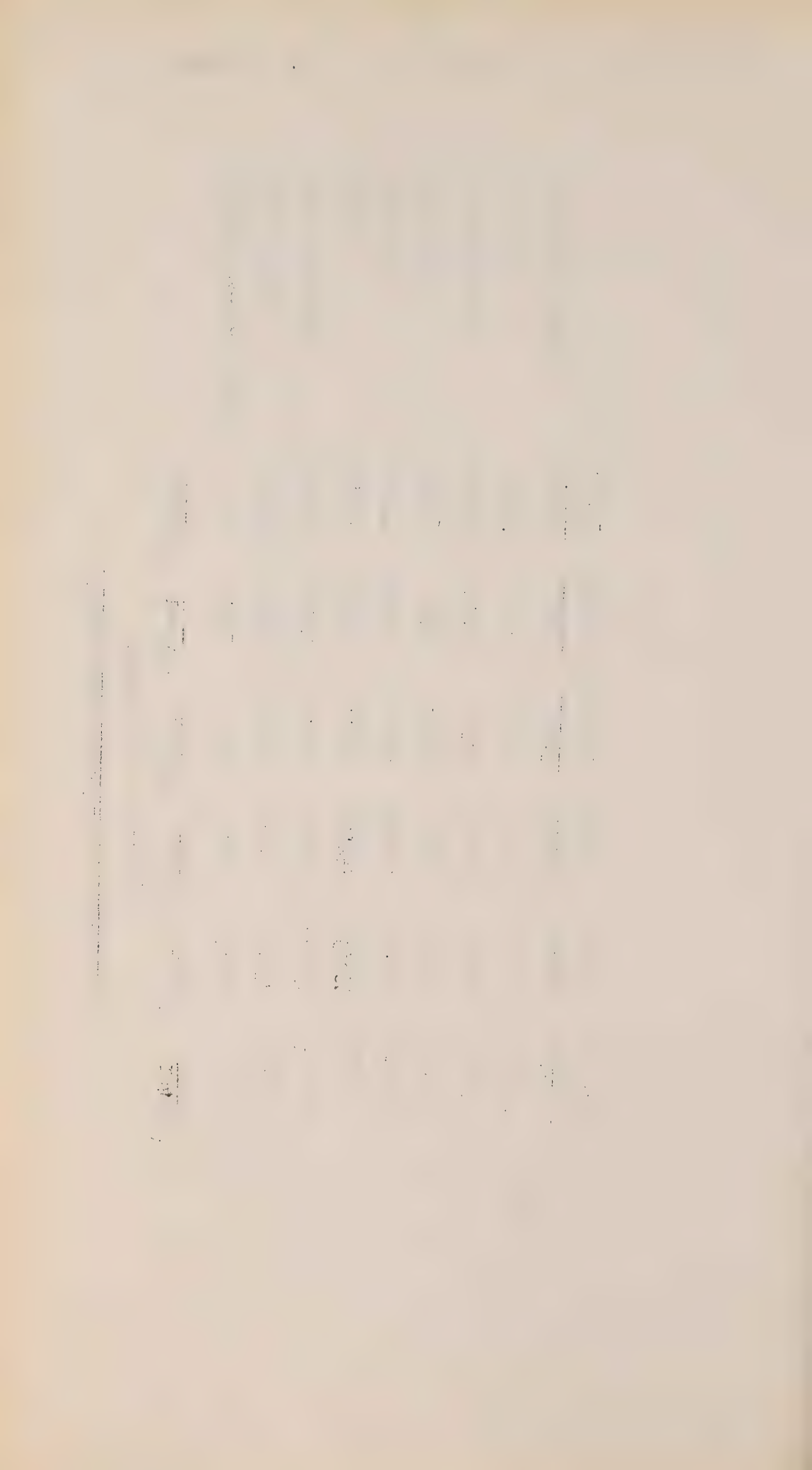
EXPENDITURES ON PROVINCIAL HIGHWAYS (1)

(Thousands of Dollars)

	<u>1930(2)</u>	<u>1935(3)</u>	<u>1940(4)</u>	<u>1945(5)</u>	<u>1946(5)</u>	<u>1948(6)</u>
Prince Edward Island	335	1,442	868	1,224	1,407	2,926
Nova Scotia	4,865	6,872	4,274	4,829	7,771	20,230
New Brunswick	8,322	5,171	2,529	5,843	11,176	19,289
Quebec	15,201	12,067	31,063	25,349	36,037	50,456
Ontario	35,767	28,696	29,216	26,549	48,677	61,982
Manitoba	3,815	691	1,508	2,355	3,333	7,469
Saskatchewan	10,182	1,754	1,713	3,912	6,158	8,995
Alberta	6,656	3,242	3,093	7,157	12,026	12,961
British Columbia	<u>7,958</u>	<u>5,650</u>	<u>5,667</u>	<u>6,559</u>	<u>8,820</u>	<u>23,254</u>
	93,101	66,535	79,931	83,777	135,405	207,562

Mr. Cronkite

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- (1) expenditures include the cost of new construction, maintenance and general expenditures. The distinction between the two types of expenditures, namely, construction (capital) and maintenance (revenue) are generally difficult to separate. The public accounts of the provinces do not adhere to common rules in this regard so that it was felt necessary to combine all expenditures in order that a comparable picture could be given. The expenditures cover those of the provincial governments only and not expenditures incurred by local governments on roads (Page 735, Canada Year Book 1934-35).
- (2) 1934-35 Canada Year Book, page 735.
- (3) 1939 Canada Year Book, page 667.
- (4) 1943-44 Canada Year Book, page 599.
- (5) 1948-49 Canada Year Book, page 709.
- (6) Public Accounts of Province.
- - - - -

MR. CRONKITE: It should be noted that the total for 1948 was \$207 million. That did not include municipal expenditures. As a matter of fact it is difficult to make a computation of municipal expenditures because they commonly would involve some double counting since they get aid from the provinces, so that includes in this total merely the expenditures by provincial bodies. From 1946 to 1948 it jumped from \$135 million to \$207 million. Going back to 1935, the low point was actually \$66 million.

THE CHAIRMAN: Is Saskatchewan the only province where there has been a decrease in expenditures? I think so. You say \$10,182,000 in 1930?

MR. CRONKITE: That is true.

THE CHAIRMAN: Then way down to \$1.75 million, and in 1948 it was nearly \$9 million. That is the only province in that position, I think.

MR. CRONKITE: Apparently that is true. In Saskatchewan we went down very low during the depression, down to \$1½ millions. From the reports in the provincial budget, which I don't have with me, that situation, I think, will be corrected in 1950, in the 1950 building program, because all over Canada there is just a terrific outcry and demand on all governments to build more and more highways, and the public money that was put into railways just becomes insignificant when the expenditure on highways is compared with it. Now, on top of this the Trans-Canada Highway is apparently about to become a reality, and the provinces and the Dominion have entered into agreements, or some of the provinces, already.

The truck and the bus therefore offer increasing competition by land. But competition does not stop there, particularly in the matter of passenger traffic. A menacing competitor in the form of aircraft has come into prominence in the last few years.

THE CHAIRMAN: That is in the passenger field?

MR. CRONKITE: That is in the passenger field particularly, as appears in these figures from the Dominion Bureau of Statistics.

(Table follows)

AIR TRAFFIC IN CANADA, 1934 TO 1948PASSENGERSPassengers carriedTotal
PassengersPassenger Miles

<u>Year</u>	<u>Revenue</u> <u>(No.)</u>	<u>Between</u> <u>foreign</u> <u>stat'ns</u> <u>Revenue</u> <u>(No.)</u>	(a) <u>Carried</u> <u>(No.)</u>	<u>Revenue</u> <u>(miles)</u>	(b) <u>Total</u> <u>(miles)</u>
1948	1,054,778	7,325	1,103,798	321,704,118	342,685,230
1947	836,047	10,674	893,171	237,986,178	257,945,385
1946	802,811	6,673	833,840	206,776,408	215,545,977
1945	490,809	16,711	525,407	153,504,833	159,163,445
1944	371,397	20,846	403,938	111,127,010	113,886,329
1943	282,886	19,381	314,642	100,530,892	103,390,464
1942	198,205	17,497	229,047	70,554,377	73,206,601
1941	181,219	11,792	208,059	53,891,516	56,723,714
1940	135,779	1,840	149,025	38,438,439	41,165,802
1939	133,776	--	161,503	21,840,484	26,107,750
1938	104,117	--	139,806	10,913,409	14,886,718
1937	110,864	--	134,148	12,658,264	14,056,433
1936	99,451	--	111,302	8,724,790	9,653,196
1935	140,379	--	157,472	--	7,936,950
1934	72,085	--	80,806	--	6,266,475

(a) Totals include number of company employees and other non revenue passengers

(b) Totals include passenger miles flown by company employees and other non revenue passengers.

1942-48 Dominion Bureau of Statistics, Civil Aviation, 1948 Table 1.

1938-41 Dominion Bureau of Statistics, Civil Aviation in Canada, 1943, Table 1.

1934-37 Dominion Bureau of Statistics, Civil Aviation in Canada, 1940, Table 1.

MR. CRONKITE: Going back to 1934, the total in passenger miles, a total of a little over 6 million, that has grown in 14 years to 342 million passenger miles. From 1945 to 1948, the three year period, that traffic has, according to these statistics, considerably more than doubled. The increase is simply phenomenal. Even in the field of freight transportation, there is some possibility, if not in wheat, in some lighter materials, that aircraft will become a significant factor. According to the Dominion Bureau of Statistics figures the total air-freight ton miles in Canada in 1936 was, 1,066,036, and this had increased to 5,458,260 in 1948 (those are air-freight ton miles). Making another comparison, in 1946 the total air-freight ton miles was 2,302,951, and this figure had more than doubled two years later. With improvements which are inevitable the aircraft may well become a serious competitor to the railways.

Competition is then on the increase by land and by air, and it might be in order to mention a carrier of a different type. It will be recalled that the Saskatchewan submission, Exhibit 128, pages 20-21, indicated that despite increasing truck competition a substantial rail movement is involved in the distribution of gasoline and other petroleum products on the Prairies. Now, another competitor appears -- a pipe line from Edmonton to the lakehead at an estimated cost of \$90 million, and construction is going ahead now.

EFFECT OF COMPETITION:-

The members of the Commission will have noted that considerable attention has been given to the position of railways in the competitive transportation field, both by my friend Mr. MacPherson and by me. This position is of fundamental significance in the opinion of the Government of Saskatchewan. It is of great significance in two ways, (1) insofar as it affects the position of the railways themselves and their capacity to serve the nation effectively within a legitimate transportation field; (2) as it particularly affects the prairie users of railway freight services who, under existing trends, seem destined to bear the brunt of the cost of operating expensive railway systems.

First, I wish to address myself briefly to certain phases of the railway problem in general. Among these is the question of a possible enlargement of the Canadian National System and on this I shall be as precise as possible in order that the position of the province may be made clear.

NATIONALIZATION:-

It will be recalled that at page 7 of the Outline of Representations filed with the Commission in April of last year the Government of Saskatchewan, referring specifically to section 2 (e) of P.C. 6033, expressed the following opinion:-

"....a study of the possible contribution which public ownership of all railways could make to the solution of the

Canadian transportation problem, might well be undertaken."

At page 88 of the formal submission (that is Exhibit 128) of the Province of Saskatchewan filed with the Commission in September of last year, the Province repeated its suggestion that such a study be made by the Commission. Finally, in November of last year, in answering certain questions of the Chairman of the Commission on this point, Dr. G. E. Britnell, as witness for the Province, urged that, in view of the many aspects of the problem and the small amount of competent assistance available to the Province of Saskatchewan, the study should be undertaken by the Commission. (Vol. 52, pp. 10062-3).

THE CHAIRMAN: Now, insofar as recalling the Provincial Brief and Dr. Britnell's evidence or statement, the Province does not commit itself for or against Government ownership.

MR. CRONKITE: That is true, and I should like to elaborate that a bit to make that certain. It is two or three pages.

THE CHAIRMAN: That is to say you tell us to study it but you don't contribute to the study?

MR. CRONKITE: Well, we suggest certain phases that might be entered into, and I would like to express this very honestly held opinion by the Province, that they don't know the answer but they would like information.

THE CHAIRMAN: One of the Provinces, Prince Edward Island, does go into it rather fully.

MR. CRONKITE: Yes, that is true. I had intended

later to comment on it that I don't think that the Province of Saskatchewan would draw a conclusion either for or against, from the material which so far as I know that Province has submitted. What I saw was historical material, largely the opinions of various persons.

THE CHAIRMAN: Your Province doesn't advocate anything?

MR. CRONKITE: No, except that I would like to elaborate a little on that, but I will give you a straight answer. They haven't the answer, they don't know one way or another, but they would like some information.

The position of the Province was exactly what it was stated to be. The Government had no doctrinaire views either for or against nationalization. It did not have the facilities for a proper investigation and the problem lay in the national rather than in the provincial field, and it is not too good to be giving advice to other people. It was realized that the Canadian Pacific Railway had provided transportation services for a great number of years and that an affirmative answer to the question presented would require good reasons, reasons looking in the direction of advantage to the people of Canada. Nevertheless, it was evident that the Canadian National System had made great progress over the last few decades and that certain privately owned systems had not done at all well, some years ago,

necessitating their nationalization by the Dominion of Canada. It was also felt that alleged difficulties in co-operation among or between the existing railways might be more easily solved under public ownership. Hence, it was thought that the question put was a pertinent one, particularly to a Commission enjoying such wide powers of investigation.

I should say, and I omitted to say in the written text, that one of the features that the province would be quite unable to go into and get any answer to is the matter of co-operation. It is undoubtedly beyond the position of the province to do that.

THE CHAIRMAN: Are you bringing in co-operation there?

MR. CRONKITE: I am going to say more about it.

THE CHAIRMAN: You mean co-operation under the statute?

MR. CRONKITE: Between the two railways under the Canadian National-Canadian Pacific Act.

THE CHAIRMAN: Why do you mention that here?

MR. CRONKITE: I say that is one of the things that the province would like to investigate but is not in a position to do it itself.

THE CHAIRMAN: You raise that later on?

MR. CRONKITE: Yes.

THE CHAIRMAN: You know our commitment in that respect. It is to report on the results achieved by the operation of that Act, and I think to suggest any amendment or otherwise. Just let us make sure about that. We are to:

"review and report on the results achieved under the Canadian National-Canadian Pacific Act of 1933 and amendments thereto, making such recommendations as the present situation warrants."

Are
/you going to make any recommendations to us, which you think the present situation warrants?

MR. CRONKITE: No sir.

THE CHAIRMAN: I see.

MR. CRONKITE: Except maybe incidentally. Maybe it is involved incidentally in some observations I make. But I should like to make the position of the province clear here, that ^{any} ~~ten~~ problem of nationalization, the extent of the possibility of co-operation between the two great railway systems is a relevant factor.

THE CHAIRMAN: You mean as an alternative to nationalization?

MR. CRONKITE: Yes.

The evidence submitted to this Commission over the past ten months has ^{merely} ~~merely~~ served to strengthen the conviction that the suggestion, put forward on these three occasions by the province of Saskatchewan, should receive very serious consideration. Somewhat paradoxically the evidence submitted by Professor McDougall on behalf of the Canadian Pacific Railway lends, perhaps, the strongest support of all to the proposition that public ownership of all railways may have a contribution to make to the solution of Canadian Transportation problems.

THE CHAIRMAN: You call it a contribution. If you have Government ownership, that is very complete, definite and final solution, is it not, and not a contribution?

MR. CRONKITE: I would hate to say it would be a complete solution. It would be final.

THE CHAIRMAN: It would oust everybody else.

MR. CRONKITE: That might not be the solution for the freight users.

THE CHAIRMAN: The responsibility of the railways functioning is thrown on the Dominion Government.

MR. CRONKITE: Yes.

THE CHAIRMAN: I do not see how you can call it contribution.

MR. CRONKITE: What I mean is this. It might be more satisfactory to the users of freight services.

THE CHAIRMAN: Is it not one of these things that, once done, can only with the very great difficulty, be undone?

MR. CRONKITE: That is quite true.

THE CHAIRMAN: It would have to be final, it seems to me.

MR. CRONKITE: Looking at history, the movement has been from private to public rather than from public back to private.

THE CHAIRMAN: History bears that out, I think.

MR. CRONKITE: Yes, certainly. That is one of the reasons why the province of Saskatchewan does not desire to be doctrinaire in that particular.

THE CHAIRMAN: Why do you say Professor McDougall ^{that about} who is not a Canadian National supporter?

MR. CRONKITE: I am coming to that.

THE CHAIRMAN: I thought you were leaving that.

MR. CRONKITE: No. I am bringing this up again.

THE CHAIRMAN: All right.

MR. CRONKITE: It is felt, moreover, that there is considerable general interest in this matter.

It is respectfully urged therefore that attention should be given to this problem. It is suggested, moreover, that in the examination of the problem the followings items might well be considered, in order that the province will not be helpless in the matter. The first is a matter that has been mentioned in the hearings frequently, the matter of monopoly. 1. It is submitted that we have been unduly alarmed by those who raise the bogey of government monopoly.

The railway systems of Canada as Professor McDougall has told us already constitute a duopoly. Little real competition exists now between the two great systems in this country. There is no competition in price. Competition, insofar as it exists, is restricted to service, and that only in relatively small segments of the economy. Any effective competition in the field of transportation in Canada today is to be found, not in competition between the railways but between the railways and other carriers, such as trucks.

THE CHAIRMAN: Did Professor McDougall say that the railway systems today have a monopoly? Did he call it a duopoly? I suppose it means the same thing. Was he not considering trucks and other modes of transportation?

MR. CRONKITE: What I meant was that so far as railway transportation goes, the two great systems have practically a monopoly.

THE CHAIRMAN: Whereas in the United States they have several railways?

MR. CRONKITE: Yes, dozens of roads.

THE CHAIRMAN: That is what you meant?

MR. CRONKITE: Yes.

In the matter of public policy it may well be urged that the Canadian National-Canadian Pacific Act indicates a belief by Parliament that a degree of unwholesome competition exists, or did exist in 1933.

2. Secondly, the question should be raised whether under a government monopoly an integration of services would not result which would give more effective transportation services to the people of Canada.

3. Attention should be given to the financial future of the C.P.R. The evidence of Professor McDougall certainly seems to suggest that, in terms of economic

realities, it is highly improbable that the Canadian Pacific Railway will ever again be able to borrow sufficient capital on common or equity stock to finance any major program of development or reconstruction. Professor McDougall indicated that before such borrowing could take place it would be necessary to bring C.P.R. common stock back to something better than par. This could only come about as the result of a very great increase in earnings. Any such increase in earnings would seem to pre-suppose very large increases in freight rates -- probably double those already granted over the past two years. By this test the price of C.P.R. solvency would appear to be the solvency of the freight users. Yet the situation, I suggest, is really worse than this; for any very great increase in freight rates would inevitably be an extremely disappointing business, resulting not in any proportionate increase in earnings but in the loss of larger and larger segments of traffic to competing forms of transport as the railways priced themselves out of the market.

THE CHAIRMAN: Would you pardon me a moment when you say "increases in freight rates, probably double those already granted over the past two years", I just want to know one thing. Did Professor McDougall say that?

MR. CRONKITE: No, that is my statement. I may say while I used the word "double", I would not suggest that I made any actual computations. Actually, if you turn to page 20, which was discussed this morning, Mr. MacPherson by computation had worked the 40 up to 70.04; * and with the other qualifications --

THE CHAIRMAN: I thought that you were quoting Professor McDougall.

MR. CRONKITE: No. I am not quoting Professor McDougall at all.

(Page 21705 follows)

The facts suggest that issues of railway stock are never again likely to attract the investing public as they did two generations or even a generation ago. The reasons for this are not far to seek. The long run prospects for effective competition by other carriers cloud the future of North American railways. Only the long-haul movement of bulky staples remains a monopoly of the railway companies. In every other field the rail carriers can expect increasing competition from other carriers.

Under such conditions effective alternatives to the financing of the railways by common stock issues must be sought. Two such alternatives suggest themselves, and have been discussed to some extent. First, loans by the Dominion Government at the low rates of interest available to the Government. Such loans would appear to be inimical to the continued independence of a privately owned road over any length of time. In fact this alternative would appear to make the worst of both worlds -- of private and of public ownership.

THE CHAIRMAN: Have you in mind really loans that would be expected to be repaid?

MR CRONKITE: Oh, yes, sir, I would.

THE CHAIRMAN: Principal as well as interest?

MR CRONKITE: That would be the ideal way. Certainly I am quite serious in saying so, and I think the Canadian Pacific has shown a desire to be independent.

THE CHAIRMAN: That is, you would have the Dominion Government invest where you say the public would not invest?

MR CRONKITE: Yes; and of course if the loans were to be repaid, and with interest, then the railway would lose a minimum of its independence. That would be the ideal

situation, if Government loans were to be resorted to.

The other alternative lies in borrowing by the railway on equipment trust securities and bonds. Under present conditions some capital could doubtless be raised by these devices, and is being raised.

THE CHAIRMAN: What is the position now, Mr. Cronkite, about equipment trusts? Do any such exist in Canada?

MR CRONKITE: I am not sure what names they are called, but---

THE CHAIRMAN: That system is being used now, is it?

MR CRONKITE: I understand it is, by the Canadian Pacific Railway.

THE CHAIRMAN: By both, I am told, by both the C.P.R. and the C.N.R.

MR CRONKITE: And to a considerable extent.

THE CHAIRMAN: That is true, is it, Mr. Friel? The C.N.R. also?

MR FRIEL: Yes, sir.

THE CHAIRMAN: I ask that question because it would seem to be implied here that it is not being used -- "the other alternative".

MR CRONKITE: No, I think the text will show that I said "could be and is being".

THE CHAIRMAN: "The other alternative lies in borrowing by the railway on equipment trust securities and bonds."

Both railways are now doing that to some extent.

MR CRONKITE: When I spoke I added "could and is".

The solvency of the Canadian Pacific Railway over upwards of two generations -- in striking contrast to the melancholy history of nearly every Class I railroad in the United States -- has been assured by avoiding the rigidities

in company financing which a large bonded indebtedness carries with it. Yet with a shift in the proportions of equity stock to bonds any adverse change in economic weather might be expected to put the railway in jeopardy, as, for instance, large bond borrowings and coinciding with a depression. The position of the railway in the economic life of the country would compel loans on a piecemeal basis with consequent agitation for the government to take over the road. Surely we can learn something from the histories of the Canadian Northern, the Grand Trunk and the Grand Trunk Pacific.

THE CHAIRMAN: You do not want to see the C.P.R. in that position, do you?

MR CRONKITE: No. Frankly, I do not think that we could afford as a nation to have the Canadian Pacific, a great transportation system like that, in that position; and it is my understanding that that is the way the Dominion Government felt when these other named railways were in difficulties. It would be just too big a shock to the economic life of the country to be borne. I understand that this has been the experience with some of the American roads, that the readjustment period during a receivership is a very difficult one, in which the service may run down.

It seems to me that nothing is to be gained by a refusal to face the realities of the situation. There is some virtue in a cool assessment of the prospects now, before the C.P.R. goes the path of other Canadian lines, and I certainly hope it will not. This implies no criticism of the management of the Canadian Pacific Railway. It simply suggests that the long run trends may well be against its continued survival as a privately owned and operated utility. No prophecy of doom is being made but it is suggested that the possibilities should be assessed at this time, and when

there is an independent Commission which could make an assessment.

THE CHAIRMAN: Then I understand you to say that if this undesirable outcome seems to threaten, recourse should be had either to Dominion Government loans to keep the company alive or to Government ownership; is that it?

MR CRONKITE: I would not like to be doctrinaire as to which would be the proper one, but I think they are matters, when the whole transportation problem is being considered, to be thought about.

THE CHAIRMAN: You do not see the possibility of one leading to the other, Government loans leading to Government ownership?

MR CRONKITE: I think it might very well be, yes. Again, I am no prophet, and I do not want to appear as one, but certainly if there were heavy loans made to a road and the loans were not paid up, it would just drift into a taking over, I suppose. It would be the ordinary procedure of a mortgagee and mortgagor transaction.

Fourthly, and finally, it is suggested that this problem can not be considered as a matter of free enterprise against government enterprise. The Canadian Pacific Railway was begun as an instrument of national policy. In a material sense the huge subsidies, the tremendous grants of land and the virtual financing of the road by the Government of Canada up to the end of the century indicates that private enterprise got some wholesome public assistance inconsistent with any other conclusion than that an instrument of national policy was contemplated. And I find no reason to change my mind about that, even though a very small percentage of the common stock of this railway is held in Canada -- 15.77, according to the Annual Report for 1949.

The argument for careful examination of the possible

advantages of nationalization is put forward not as a matter of ideology or as a doctrinaire solution of a difficult and complex problem but as a prescription of common sense. Nationalization would involve no abrupt break with Canadian tradition. For, as we have emphasized, the provision of transportation facilities -- first of canals, then of railways -- has been the traditional concern of the Canadian state over at least five generations. With respect to railways, expediency rather than fundamental principle dictated, from the beginning, whether railways would be built and operated by the state or by private companies financed by state benefactions and guarantees. Whatever the form the state has always been a partner in the enterprise.

Public ownership of all railways is perfectly consistent with the view of railways as instruments of National Policy. A slavish and doctrinaire adherence to the principles of laissez-faire will solve no problems. It will, however, impede clear thinking on any problem. If we are to keep things in perspective we must remember that the sole function of Canadian railways is to provide the most efficient transportation service to the Canadian people at the lowest possible cost.

THE CHAIRMAN: Is this your position, that whereas Professor McDougall says that if the private railway at least is to be allowed to carry on and live it must be put in a position where it will receive annually much greater earnings than at present -- that is what he says.

MR CRONKITE: Yes.

Q. And you say, no, instead of that, either have recourse to Government ownership or to Government loans: is that right?

MR CRONKITE: Well, if the situation is as serious

as---

THE CHAIRMAN: Have you in mind, then, that under Government ownership freight rates would be kept down, so that even if they were not remunerative to the Government utility they would not be raised?

MR CRONKITE: No, sir, I did not think that the freight rates should necessarily be any lower at all under public enterprise than under private. I think the railway should be run as a business proposition, and it does not make---

THE CHAIRMAN: You see; what Professor McDougall says would be necessary to keep the private enterprise alive now, and you say that what he asks for is too great to be considered, it would double freight rates, and therefore you should have recourse either to Government ownership or to some system of financing of the private company by the Dominion Government.

MR CRONKITE: Well, sir, I did not mean to give the impression--

THE CHAIRMAN: You must have in mind, then, that either of those two measures would obviate the necessity of increasing rates to the level that ~~was~~ Dr. McDougall says would be necessary to keep the C.P.R. going.

MR CRONKITE: Sir, I did not mean to give the impression that my sole reason for asking this inquiry was because freight rates might be raised.

THE CHAIRMAN: Well, you said that Dr. McDougall's evidence did furnish the strongest argument in favour of---

MR CRONKITE: Yes, sir, but what I meant was this, that the implications of that were that the railway might be in very serious fiscal difficulties.

THE CHAIRMAN: Because it cannot earn enough.

MR CRONKITE: Yes. I think ^{with} too abrupt a raise of

rates you have one alternative, that you may price yourselves out of the market. Of course, we have the additional factor which Mr. MacPherson spoke about this morning, and which I am coming back to, that the tendency would be to put all of this burden on the long-haul, bulky traffic, and that that might mean increasingly that short-haul rates, short-haul traffic, would probably be carried below cost.

THE CHAIRMAN: I do not really see how Government loans could remedy all these things that you see threatening us.

MR CRONKITE: Well, I merely suggest it as one method of finance.

THE CHAIRMAN: If bona fide loans are intended to be paid back, interest and principle and so on, you would have to have earnings to do that.

MR CRONKITE: Well, it might be that with a larger system, with a reconstruction of the system -- and evidence has been given that a large amount of money should be spent, I think about \$400 million over a period -- the railways would be in a better position to stand competition. Now, I am not, and the Province is not, in a position to give an answer on that.

COMMISSIONER ANGUS: Is it not your argument, Mr. Cronkite, that the interest on Government loans would require a much smaller addition to the earnings of the railway than paying interest on an equivalent sum raised by common stock and also paying enough to raise the present mass of common stock to par? I mean, that seems to me to emerge from what you have said. There would be a very great difference between the two rate levels.

MR CRONKITE: There would be some difference all right, sir. There would be a difference in the interest rate

in the beginning -- assuming, that is, that 5 per cent is to be considered as the common stock payment and say 2 per cent would be quite a sizeable sum. There would be that difference, yes.

Now, still on the first phase, that is, matters which concern the railways and their future, I first look at the Canadian National capital structure:

C.N.R. Capital Structure

Still dealing with the general position and welfare of the great railway systems I should like to deal very briefly with the recapitalization of the Canadian National.

The Government of Saskatchewan agrees in principle with the proposals put forward by Mr. Gordon, Chairman and President of the Canadian National to this Commission. We cannot say definitely that the amounts suggested in Mr. Gordon's statement are proper, but we have no evidence upon which to dispute them. We agree in principle for two reasons: (1) we think it desirable that the Canadian National and the Canadian Pacific should be placed on a reasonably competitive basis; (2) as a matter of fairness to the Canadian National we believe its capital structure should reasonably represent actualities. It is unfair that the system should be saddled with an obligation of debt for which it has not received value, quite the reverse of receiving a subsidy.

We do not share the objections of the Canadian Pacific to this recapitalization proposal. It is submitted that it is a thoroughly unwholesome situation that one system should be put and kept in a preferred position. We cannot agree that the Canadian Pacific should be the perpetual yardstick for rate-making purposes. Such a situation would pretty well involve a perpetual guarantee of a five per cent

return on ordinary stock to this company regardless of its efficiency in development or operation.

THE CHAIRMAN: When you say there, "It is submitted that it is a thoroughly unwholesome situation that one system should be put and kept in a preferred position," would you apply that both ways?

MR CRONKITE: Yes.

THE CHAIRMAN: That neither of these two systems should be put in a preferred position in respect of the other?

MR CRONKITE: I absolutely agree. I see no reason for preferring one to the other.

THE CHAIRMAN: Then you think that the extent of recapitalization asked for by Mr. Gordon would not have that effect?

MR CRONKITE: Well, as I stated, we agreed in principle, and after considering it we just could not say that Mr. Gordon was wrong; but I would want to repeat, sir, that we do not want the Canadian National in any preferred position to the Canadian Pacific. Somebody has to pay the piper finally, and personally it does not help me out to pay it through taxes.

THE CHAIRMAN: You cannot agree that the Canadian Pacific should be the perpetual yardstick for rate-making purposes. Of course, the use of such words as "perpetual" I do not think means much; they just frighten one. You cannot agree that the Canadian Pacific should be considered as always going to be the yardstick. You say:

"Such a situation would pretty well involve a perpetual guarantee of a five per cent return on ordinary stock . . ."

It is the yardstick now, and has been---

MR CRONKITE: Yes, and I do not think there was

any effective alternative to its being the yardstick during the recent rate cases.

THE CHAIRMAN: Well, has it brought about a guarantee of the five per cent return on ordinary stock?

MR CRONKITE: No, sir, it has not brought any guarantee, but the---

THE CHAIRMAN: I mean, in effect has it?

MR CRONKITE: I hope they are in a position to pay the five per cent under current circumstances.

(Page 21717 follows)

THE CHAIRMAN: Yes, but you remember they are earning other things besides railway revenues.

MR. CRONKITE: Yes, sir, that is true.

THE CHAIRMAN: What do you suggest about a yardstick?

MR. CRONKITE: I think I come to that. It is in the next paragraph.

On the other hand, there should be no thought, and I am sure there is no thought, of being unfair to the Canadian Pacific. But no one road should be the yardstick for rate-making. The fiscal needs of the roads, the efficiency of the roads and the public interest generally should all be factors. I would not anticipate injustice to anyone, especially if the Board of Transport Commissioners is strengthened, as we feel it should be, and as many of the submissions will request.

THE CHAIRMAN: Is this a fact, that if hitherto in the last few years Canadian National had been taken as the yardstick, freight rates would have been higher?

MR. CRONKITE: I should think that would have been very satisfactory to the Canadian Pacific. I think if this capitalization proposal is adopted (and I am by no means sure and have no way to find out whether the amounts are correct) they will be in a reasonably competitive position, and I would hope that the Transport Board would be so equipped with staff that it would be able to find out about these railways, to find out whether they are efficient and keep them up to it.

THE CHAIRMAN: You mean it might alter this present measure, this measure of requirements?

1. The first part of the report is devoted to a general description of the country and its resources. It includes a detailed account of the climate, the soil, and the vegetation. The second part of the report is devoted to a description of the population and its habits. It includes a detailed account of the customs, the laws, and the government of the country.

2. The third part of the report is devoted to a description of the commerce and industry of the country. It includes a detailed account of the principal exports and imports, the principal manufactures, and the principal occupations of the people. The fourth part of the report is devoted to a description of the education and the state of the sciences in the country.

3. The fifth part of the report is devoted to a description of the military and naval forces of the country. It includes a detailed account of the organization, the equipment, and the training of the army and the navy. The sixth part of the report is devoted to a description of the public works and the state of the roads and the bridges in the country.

4. The seventh part of the report is devoted to a description of the public health and the state of the hospitals and the dispensaries in the country. The eighth part of the report is devoted to a description of the public administration and the state of the courts and the prisons in the country.

5. The ninth part of the report is devoted to a description of the public finance and the state of the revenue and the expenditure of the country. The tenth part of the report is devoted to a description of the public opinion and the state of the press and the literature in the country.

6. The eleventh part of the report is devoted to a description of the public works and the state of the roads and the bridges in the country. The twelfth part of the report is devoted to a description of the public health and the state of the hospitals and the dispensaries in the country.

7. The thirteenth part of the report is devoted to a description of the public administration and the state of the courts and the prisons in the country.

MR. CRONKITE: It might be, that would be one - -

COMMISSIONER ANGUS: Mr. Cronkite, do you think that the amount of funded debt of the Canadian National Railways or of the securities on which they are expected to pay interest, should be calculated so as to make the two railways pretty evenly competitive?

MR. CRONKITE: I would like to see that, yes, and I think it would be a very wholesome thing. We talk about competition and if we are going to have two roads I would like to see them where they can be competitors; and if one road is smarter than the other to take advantage of technological improvements and things like that, why, more power to them. That would mean that it would be the yardstick for just then, for that period. That of course is of importance and significance only if the two roads - -

THE CHAIRMAN: What would be the yardstick? The road that shows the best results at the end of a given year?

MR. CRONKITE: Yes, I say that ought to be one factor, a very strong factor. Now, I don't think the capitalization of the two rates can ever be calculated to a nicety, but, to answer Mr. Commissioner Angus's question, it would get them more or less together.

THE CHAIRMAN: Should a recapitalization of the C.N.R., if it is made, be scaled with the object in view of not making it unduly low in respect of the other railway?

MR. CRONKITE: Yes, I think that should be

guarded against as much as the opposite, that it would be grievously unfair to put the Canadian Pacific Railway at a disadvantage compared with the Canadian National.

Now, looking over these proposals, all I can say on behalf of the province, is that we agree in principle and we have not any evidence to contradict the amounts that Mr. Gordon set out in his statement. We have not very many facilities for finding out those things, but we hoped that the Commission would.

THE CHAIRMAN: Well, can you go this far? I asked Mr. MacPherson and he said you would answer me. Perhaps he was engaging you a little too stringently, but are you in favour of keeping the C.P.R. in a living condition as a private enterprise? You have given us what the alternative would be.

MR. CRONKITE: Well, I don't think I can answer that except in terms of the last paragraph or two. I think it is just as bad to be a doctrinaire laissez faire man as to ^{be} a doctrinaire state-enterprise person. It seems to me the only thing is, the sole function of Canadian railways is to provide the most efficient transportation service to the Canadian people at the lowest possible cost and developed under all the circumstances including these things I put. Maybe I was frightened too easily, but if all these things indicate that in the future you can get these things better by extending the Canadian National System, then I think - -

THE CHAIRMAN: By total Government ownership?

MR. CRONKITE: Yes, sir, that is what the question involves. Well, that seems to be the answer,

but just a rigid adherence to any political ideology or free enterprise won't solve it.

THE CHAIRMAN: You say that the efficient service at the lowest possible cost should be the measure. Now, whether that requires Government ownership or a continuation of private enterprise ownership along side of Government ownership competing with it, we should recommend whichever seems to be the best adapted to provide that efficient service.

MR. CRONKITE: That is exactly, sir, what the Province of Saskatchewan would like, but it would like that the study should not be made with a doctrinaire approach, except for this - -

THE CHAIRMAN: Well, a practical approach, efficient service and lowest possible cost.

MR. CRONKITE: If there is to be any dramatic change, I think it is fair to say that the burden of proof should be on the side of those who want the dramatic change. It is up to the people having the affirmative of the issue usually to persuade the tribunal.

THE CHAIRMAN: Go on, Mr. Cronkite.

MR. CRONKITE: The next heading is "Other Assets", a matter that was spoken to briefly by Mr. MacPherson this morning.

OTHER ASSETS:-

The Province of Saskatchewan emphatically repeats the argument which appears on page 75 of the printed submission with reference to subsidiary ventures of the Canadian Pacific. Every last venture

including mining investments should be considered as railway investments for the purpose of rate-making or any other purpose.

THE CHAIRMAN: Now, that is definite, is it?

MR. CRONKITE: That is my definite instruction from the Government.

THE CHAIRMAN: That is what you are arguing now?

MR. CRONKITE: Yes.

THE CHAIRMAN: That every venture including mining investments ---that you would exclude nothing that is?

MR. CRONKITE: Nothing.

THE CHAIRMAN: You know what the C.P.R. has today, and you would include everything?

MR. CRONKITE: Yes.

THE CHAIRMAN: That provides income of any sort or might produce income: it should be considered as railway investment for the purpose of rate-making or any other purpose?

MR. CRONKITE: I cannot distinguish, so far as income goes, one kind of income from another as corporate income.

THE CHAIRMAN: And you would take that both ways, would you, so that any of these investments which show losses- -

MR. CRONKITE: Yes, we have to, and I think likely there have been losses with some of these investments at times. I would be greatly surprised for instance (I haven't the information) if in a period of depression the hotels might not be rather a poor investment.

COMMISSIONER ANGUS: Would you include foreign railways?

MR. CRONKITE: If they are corporate investments, yes, I would have to.

COMMISSIONER ANGUS: And I suppose, take them in on the other side as well as part of the investment or - -

MR. CRONKITE: Well, I think that is one of the good arguments, Mr. Commissioner, for the affirmative position I have taken, that if they do show losses we know blamed well that - -

THE CHAIRMAN: Can you consider that they might show gains so great that they could carry freight for nothing?

MR. CRONKITE: I am afraid they won't, but I hope they do.

COMMISSIONER ANGUS: Doesn't the test you are suggesting put the Canadian National Railways at a disadvantage?

MR. CRONKITE: Well, perhaps it does. I don't think that it is a disadvantage that a competent Transport Board cannot calculate.

THE CHAIRMAN: You see, if the C.P.R. is to be continued at least for some time as the yardstick, then it might be a disadvantage to the C.N.R.

MR. CRONKITE: It might put them at an accounting disadvantage.

THE CHAIRMAN: As at present constituted?

MR. CRONKITE: I should not like though just to remove that disadvantage, to have the Canadian Pacific give those assets away or anything like that.

COMMISSIONER ANGUS: Haven't you got to elect between those two things?

MR. CRONKITE: If it is a case of election, as advised, I will stick to my text. My position fundamentally appears in the next few lines, that under the Act of Incorporation which created the Canadian Pacific Railway the building and operation of a railway was authorized, and the fact that Canadian Pacific has not been exactly a rolling stone over the last few decades --

THE CHAIRMAN: What do you mean by not being a rolling stone? Rolling stones don't gather any moss, isn't that it?

MR. CRONKITE: Yes.

THE CHAIRMAN: That is the reverse of this.

MR. CRONKITE: Yes, but that does not obscure the true nature of the undertaking to my mind.

Going on and amplifying, all assets of this great railway company, of whatever character, simply must have been derived from rates or tolls paid by the users of transportation services, or from public gifts by various agencies. If these assets are true railway assets, then they are a part of the railway and that settles the matter. Earnings therefrom are railway earnings. If, on the other hand, such assets are not true railway assets, not assets necessary for the operation of a proper transportation service, then they must be classed as representing excess earnings and accordingly considered as reserves, available to the company to carry out the purpose for which the company was created. Any other conclusion will, I submit, shock

the faith of the reasonable citizen of Canada.

COMMISSIONER ANGUS: You don't like the view that their earnings came from taking very big risks in the early years and had been earned in that way?

MR. CRONKITE: Yes, there were some risks, but I think in the financing of the Canadian Pacific Railway the public of Canada took considerable risk too.

COMMISSIONER ANGUS: But the suggestion was, was it part of the bargain that the Canadian Pacific in consideration of taking those risks should have the chance of making these profits?

MR. CRONKITE: We can put it on the other side. They did take a risk, but if the risk had gone bad who would have suffered? I suggest the tax payers, the Government, and the users of transportation services, so that does not impress me, that feature does not impress me.

THE CHAIRMAN: Then I think you could probably have this in mind, that the Canadian Pacific was at the beginning and still is by nature a Government enterprise. Is that what you have in mind?

MR. CRONKITE: Yes, sir, not in the true sense of the stock being owned, but I say it was something that the Canadian Government just had to have, it was an instrument of national policy. It happened that it assumed the form of a private company and for many decades they got along very nicely.

COMMISSIONER ANGUS: Doesn't that view merely commit you to guaranteeing their dividends? I mean, if you make a close partnership of that kind.

MR. CRONKITE: I would not put it as a guarantee,

but through the decades they have done fairly well in dividends. There have not been many misses.

THE CHAIRMAN: Well, I think we understand.
RELIEF FOR THE PRAIRIE AREA:-

MR. CRONKITE: I now turn to the really important part of my argument to the proposals - -

THE CHAIRMAN: I think what you have just gone through is fairly important too.

MR. CRONKITE: Thank you. These proposals however that I come to are designed to be corrective. We have suggested to the Commission improvements in the regulations respecting common carriers, the regulatory procedure and the regulatory tribunal. We have made some recommendations designed to bring about a generally more equitable freight rate structure. We have suggested that the Commission study the possible benefits which may accrue from nationalization of the Canadian Pacific Railway.

THE CHAIRMAN: Of course, if the Canadian Pacific Railway were nationalized, the whole of the railway system of Canada under Government ownership, all these things then would have to be approached very differently. It is the fact that we have a private company now that raises very many questions.

MR. CRONKITE: It does raise many.

THE CHAIRMAN: Investments for instance.

MR. CRONKITE: Yes, but I am not persuaded that the regulatory machinery would have to be altered.

THE CHAIRMAN: Supposing the Canadian Pacific Railway abandoned its railway enterprise and kept its other investments and so on, then what?

MR. CRONKITE: Well, you mean - -

THE CHAIRMAN: You see, when you talk of nationalization of the Canadian Pacific Railway, what really have you in mind, just the railway itself, not the company, the railway?

MR. CRONKITE: Well, primarily we would do it through the company. The company, I suppose, would have to be dealt with. It is the legal owner of all assets.

COMMISSIONER ANGUS: Would you pay for those other assets or do you propose to confiscate them?

MR. CRONKITE: Well, I don't know exactly what confiscation means. I was impressed by your question, Mr. Commissioner, in connection with the rate base. I think Mr. Shepard has previously said there is a lot of question-begging in trying to evolve any rate base. If you take the market value or quotation of the common stock as an index of value, these assets are not worth very much, in the opinion of the investing public. It is a very perplexing problem and I think it is one that the Commission will have before them if they make this study.

THE CHAIRMAN: You see, it might turn out that these assets are not worth the investment money.

MR. CRONKITE: No, sir, I didn't mean that. I said, if you estimated the value of all the assets of the Canadian Pacific Company by the market value of the stock, then the value is not very great.

THE CHAIRMAN: Because the stock is selling at less than par, you mean?

MR. CRONKITE: Yes, sir.

THE CHAIRMAN: Would you not then have to enquire as to what sort of yield it would give the investor right today? I don't know.

MR. CRONKITE: I think it gives a very satisfactory yield, but if the investor thought that there was a real value of over a billion dollars in assets, it would be a pretty good bargain at that price, I should think. So I suggest, Mr. Commissioner Angus, that in the case of a regulating utility there is a lot of question-begging, in trying to arrive at any index of value. The regulation itself marks down the value of the assets.

COMMISSIONER ANGUS: There doesn't seem to be anything peculiar in a Government setting up a system of a regulating utility, keeping the rates at a point which leaves the valuation of the utility lower, then buying it out at that valuation, and asking it to throw in its other investments as well?

MR. CRONKITE: Well, I don't see anything criminal about it, no.

THE CHAIRMAN: Well, you had better think it over for a few moments.

RECESS

(Page 21729 follows)

THE CHAIRMAN: While we were taking a rest, Mr. Cronkite, you were looking for the answer to a question.

MR. CRONKITE: To the last question.

THE CHAIRMAN: Put by Dr. Angus.

MR. CRONKITE: I think the answer I made was that I would not consider it criminal.

THE CHAIRMAN: That is, to take over these assets of the Canadian Pacific Railway.

MR. CRONKITE: Yes, if they are company assets. It is not so easy a question to answer. For instance, the Consolidated Smelters investment is one as to which I do not know whether it is a proper railway investment or not. If it was a proper railway investment to round out the system, then there is a value placed upon the holdings in the market.

THE CHAIRMAN: You have gone this far; you have gone as far as to say that all their assets, or all their investments are to be taken into consideration in fixing their return; that is, their requirements and their return?

MR. CRONKITE: Yes.

THE CHAIRMAN: You say that?

MR. CRONKITE: Yes.

THE CHAIRMAN: Then I asked you whether you considered that this railway which you say at the beginning was a government enterprise is still today in some measure a government enterprise?

MR. CRONKITE: I certainly do. I think it is a very vital part of it.

THE CHAIRMAN: The company is just a trustee for the government. Is that the idea?

MR. CRONKITE: No. I think it is a little different than that, but it is difficult to describe it. It is an instrument of public policy and it has been regulated for a great many years. It is not a publicly-owned company.

That is certain. But it is quite different from an ordinary private company.

THE CHAIRMAN: Do you not think that the original intention was that it should, by the aid of subsidies, land grants and so on be put on its feet as a private company, and ^{was} intended from that time on to operate as a private company?

MR. CRONKITE: I think some people must have had that idea, although I do not want to go into it here. The parliamentary debates do not show a complete unanimity of opinion as to what was likely to happen or as to what it was desired should be done. But I think that in general there probably was a parliamentary opinion that these subsidies would put the railway on its feet and it would go ahead and be a good representative of private enterprise. Yes, I think I would say that.

THE CHAIRMAN: The government had to have a railway built to connect up British Columbia.

MR. CRONKITE: That is true. To that extent it started out as a public enterprise; at any rate an enterprise in which the public was very vitally interested.

COMMISSIONER ANGUS: Would you not feel a little bit mean if you lead a donkey along with a carrot and then eat the carrot yourself?

MR. CRONKITE: I should not like to characterize the Canadian Pacific Railway as a donkey, but they have done very well at getting carrots, I think, over the whole period; and pretty good big ones too.

THE CHAIRMAN: All right, Mr. Cronkite. Will you proceed?

MR. CRONKITE: Very well, sir. I was at the middle of page 65.

I now approach the main recommendations placed before your Commission by the province of Saskatchewan. We have

stated, and we now contend, that an adequate measure of relief from the transportation burden resting on the Prairie Provinces cannot be achieved through the medium of any freight rate structure capable of implementation. We now state categorically that even with the adoption of all the desirable changes recommended, relief will be relatively slight, and some further device must be employed if the Prairies are to be compensated in a degree commensurate with the burden they are now forced to support and if that same area is to be protected in the future. It is our belief that under our proposals the railways may be made true instruments of national policy.

Subsidies

The device which we propose can most conveniently be described by the word subsidy but we shall stoutly deny that it represents a gift to the Prairie area. In essence this subsidy will represent a public recognition that a subsidy is now being paid by the people of Saskatchewan, and of the prairies generally. More specifically, to a large extent, it will be a recognition that a subsidy is being paid by people of the prairies who pay long-haul freight charges for the benefit of other areas and other users of transportation.

I know that some people throw up their hands at the mention of the word "subsidy". I would submit seriously, however, that no odium should be attached to the term even when the subsidy takes the form of a direct gift, which the one I suggest will not. Subsidies are very common, indeed, I suppose a Trans-Canada Air Lines deficit is a transportation subsidy when absorbed by the people. Subsidies were even paid to the Canadian Pacific Railway. According to a publication of the Dominion Bureau of Statistics "Canadian Pacific Railway Company, 1923-1948" the grand total of "aid granted to Canadian Pacific Railway Company and other companies now comprised in that system" to December 31, 1948, amounted to: cash subsidies, \$106,699,423; land grants -subsidies 43,749,348 acres. I make no complaint about this and I presume that evidence could be adduced to prove that these gifts were put to a good use. But, incidentally, 43,749,348 acres is a lot of land. In 1949, the total acreage seeded to wheat in the three Prairie Provinces was only 26,490,000 according to Table IV, Exhibit 128. The total acreage of improved farm land in the Province of Saskatchewan is only 35,590,239.

I suppose the customs tariff operates as a subsidy to someone in some area. At any rate when I pay two or three hundred

dollars more for a motor car than I would pay in a free market, I presume someone gets the benefit. The money certainly does not go to the Dominion treasury ; and if nobody benefits, then it seems the height of nonsense that I should pay the extra money. I think I pay a subsidy, and I think I know what area gets the benefit; and they have better highways in that area than we have in the prairies.

The country simply teems with subsidies. There are subsidies to old people, to handicapped people, to unemployed people, and to women with children. Then there are subsidies being paid by America to Europe. And simply colossal subsidies are being paid by the provinces to the users of transportation in the form of highway construction, improvement and maintenance. In fact if the business of government is examined, it will be found that a big share of government consists in paying subsidies, paying people who advise when to pay subsidies, paying people who pay the subsidies and paying those who check up on whether they are properly paid.

On behalf of the Province of Saskatchewan I urge most emphatically that national policy can best be regularized and practical justice achieved through two devices, one of which is calculated to compensate for the past and the other to guard against impending evils of the future.

Now as to the first, the compensation device: I may say that it really is not compensatory in the sense that it is retroactive. It will not compensate for the past. That must be written off. As from the moment it is adopted, however, it is designed to correct certain events of the past which have harmed the prairies, and which are part and parcel of the transportation problem.

The Compensation Subsidy

This is the subsidy that follows directly from the first part of my argument to compensate against the impact of the national policy.

At page 10082 of Volume 52, the following appears:

"...the proposal of the Province is specifically as follows: that the subsidy be in the form of a deduction from all freight bills on all rail freight traffic movements within the boundaries of the Provinces of Manitoba, Saskatchewan and Alberta, on all rail freight and lake and rail movements within Canada originating in these Provinces to point of destination in other Provinces and on all rail and lake and rail freight movements within Canada terminating in these Provinces, from points of origin in other Provinces, excepting grain and grain products moving at Crow's Nest Rates."

This is our first proposal. I need hardly say that it is compensatory in its nature. The railway policy and the tariff policy formed the core of the national policy designed to make of Canada a nation. Whether it succeeded or not is beside the point, although I am prepared to admit or to contend that Canada is the finest place in the world for a free man to live in. Whether the national policy had a large share in bringing this about I do not know; but I do submit most emphatically that the price paid by the prairie region has been a heavy one. I would direct the attention of the Commission to Part II of the Saskatchewan submission and I wish to adopt the material contained therein as part of this argument, without specific reference to it.

THE CHAIRMAN: Do I understand this correctly, that the subsidy would take the form of a reduction to all shippers in every case?

MR. CRONKITE: A reduction of all freight bills.

THE CHAIRMAN: Immediately, right then and there?

MR. CRONKITE: As soon as the appropriate legislation was passed.

THE CHAIRMAN: Yes, of course. Will you proceed, please.

MR. CRONKITE: Yes.

It would be futile, Mr. Chairman, for me to argue that twenty per cent or any other percentage would be an exact compensation. I suppose it is a matter of more or less, and it would be a pretty tiresome life if everything could be calculated to the last decimal point. Nevertheless, I wish to make certain observations which I suggest will stamp the Saskatchewan proposal as a reasonable one.

1. This proposal is modelled on the Maritime Freight Rates Act and is in close analogy thereto. Twenty per cent is the rate there used. The positions of the two regions are quite comparable so far as the handicaps of Confederation and the National Policy are concerned.

2. Our proposals relate to both incoming and outgoing freight.

COMMISSIONER INNIS: In contrast to the maritimes?

MR. CRONKITE: In contrast to the maritimes. Otherwise they are just the same.

In appraising the position of the people of Saskatchewan we believe that the consumers as well as the producers require relief. Consequently, we ask for the reduction on incoming freight also. We are making no attempt to establish a protected area.

After having said what I have said about the customs tariff, I do not propose to establish or to attempt to establish a protected area in the prairies.

3. Although the impact of Confederation on the maritimes is very serious indeed, and it may be doubted whether the Maritime Freight Rates Act gives any adequate compensation, it is submitted that the plight of the prairie area is even more serious. The long haul to the west is longer and the Maritimes are in a better position to get some benefit from

water transportation.

4. There is some evidence that the impact of the tariff --

THE CHAIRMAN: That is the customs tariff?

MR. CRONKITE: Yes; that would be the customs tariff.

There is some evidence that the impact of the tariff, resulting from the national policy, is more serious in the case of Saskatchewan. I should like to refer to a table taken from a Nova Scotia Publication, "A Submission on Dominion-Provincial Relations and the Fiscal Disabilities of Nova Scotia within the Canadian Federation" (Royal Commission Economic Enquiry). That is another royal commission enquiry. This table appears at page 99 and represents the work of the late Norman Rogers. I want to make it clear that I make no claims whatever for the method used by Mr. Rogers in calculating tariff losses and gains. It is significant, however, that a study made in Nova Scotia should characterize Saskatchewan as the great sufferer. The table follows:

COMPARISON OF TARIFF SUBSIDIES AND TARIFF COSTS BY PROVINCES

Province	Tariff Subsidy per capita	Tariff Costs per capita	Net Gain per capita.	Net Loss per capita
	\$	\$		\$
P.E. Island.....	5.32	23.20		17.88
Nova Scotia.....	18.50	30.78		12.28
New Brunswick.....	19.91	31.58		11.67
Quebec.....	46.23	35.20	11.03	
Ontario.....	64.32	49.17	15.15	
Manitoba.....	28.44	41.69		13.25
Saskatchewan.....	3.55	31.71		28.16
Alberta.....	11.22	38.15		26.93
British Columbia....	32.03	54.36		22.33

I refer only to the last two columns. It will be observed that according to this computation two provinces made a net gain per capita, and the other seven - I expect now it would be the other eight - made a per capita loss. According to this computation, Saskatchewan lost \$28.16 per capita and the nearest to it was Alberta with \$26.93. As I say, I am not defending this method. I am merely citing it for that conclusion, that by the use of this method, the impact was hardest on Saskatchewan.

I should like also to refer the Commission to Table XXVII, Exhibit 128. The statistics appearing in this table indicate that in the matter of the value of manufacturing, per capita, Saskatchewan trails very definitely at the end of the procession, except for Prince Edward Island. This again is consistent with a conclusion that the impact of the customs tariff is very serious in the province of Saskatchewan.

While on the matter of the national policy as embracing railways and customs tariffs, I should like to quote from page 88 of a study by Professor W.A. Mackintosh, entitled The Economics Background of Dominion-Provincial Relations, Appendix 3 to the Report of the Royal Commission on Dominion-Provincial Relations. It reads as follows:

"The general effect of the tariff on the Prairie Provinces has, of course, been to direct the purchases of this export region eastward to Ontario and Quebec and to a much less extent to the Maritime Provinces, and westward, particularly for lumber, to British Columbia, rather than south-eastward to the closer markets of the United States. To some extent, the British preference has directed trade to the United Kingdom either through Vancouver or the Eastern ports. The direction of these purchases has been of importance to Canadian railways."

5. Finally, I should like to say that so far as giving effective relief to the people who live on the prairies and especially in Saskatchewan, I can think of no better way than be relief through freight rate payments. Everyone suffers from high freight rates as producer or consumer or both and often both directly or indirectly.

Mr. Chairman, the relief here asked for will require an Act of Parliament. We are urging that your Commission should recommend such action. It is our belief that the relief following from such an Act of Parliament would compensate in some degree for the burdens of a chronic character which had their origin in the political devices employed to give effect to the Canadian concept of nationhood. These burdens, when super-imposed upon the natural disadvantages of the inland prairie region, have resulted in a transportation burden which is / grievous indeed.

THE CHAIRMAN: I think an estimate was given in evidence as to the cost of this subsidy.

MR. CRONKITE: A very rough estimate has been made.

THE CHAIRMAN: Has that been more accurate since?

MR. CRONKITE: No, I think not. It was only a rough estimate but I think/ it was substantially correct. Any work I saw done on it verifies it.

THE CHAIRMAN: You can give it to us later.

MR. CRONKITE: I will give you the reference.

THE CHAIRMAN: We need not spend any time on that now.

MR. CRONKITE: Mr. Oliver will find it. Shall I go on?

THE CHAIRMAN: Yes, please go on.

The Deficit Subsidy

Mr. Chairman, I would now direct the attention of the Commission to the other factor which has had regional significance. From the earliest days water competition in eastern Canada has exerted pressure upon rail ^{rates} in that region. During the past quarter century the increasing prominence of the motor truck in the transportation field, again with the greater impact in Central Canada, has further increased disparities in effective rates in that area as compared with the relatively less competitive prairie region. This shift in the relative burden has been a progressive phenomenon in our transportation economy and is continuing to this day. This, I submit, is a further potent argument for the use of the subsidy device. To the extent that the chief beneficiary of both the national policy and the regional distribution of the forces' of competition has been Central Canada, any subsidy which will make possible reductions in rates applicable to western traffic may properly be regarded as a device which will redistribute the burden now resting on the prairies on a more equitable basis.

The attention of the Commission should be drawn to another factor in support of a subsidy as an equalizing or balancing device. It has been indicated, particularly by the Canadian Pacific Railway, that very substantial losses are being incurred in the carriage of passengers. It is clear that these losses cannot be taken up by revenue from competitive rates nor can there be any confidence that l.c.l. rates on short hauls afford sufficient revenue over costs to take up the slack. Therefore, we are, by a process of elimination, forced to the conclusion that the railways, of necessity, rely upon the long haul traffic to make up for these losses. The point I wish to emphasize is that the impact of all these problems focusses eventually on the long haul traffic and necessitates the maintenance of higher rates than are justified on this type of traffic.

The situation may be put in this way:

- (1) There is an admitted loss to the railways on passenger traffic. We do not know how much and we are not satisfied that a completely accurate picture is available.
- (2) We suspect, although we cannot prove, that in many cases the railways are losing money on competitive rates and perhaps on l.c.l. short hauls..
- (3) The competition from trucks and aircraft will undoubtedly become more severe;
- (4) Excessive rates are being charged on long haul traffic in order to compensate for the designated losses, and there is every likelihood that there will be an increase in this phenomenon.

Mr. Cronkite

The reference, sir, with reference to the cost appears at page 10265.

THE CHAIRMAN: Page what?

MR. CRONKITE: Pages 10265 to 10268.. That is in Dr. Britnell's evidence.

THE CHAIRMAN: What is the volume number?

MR. CRONKITE: Volume 53.

COMMISSIONER: ANGUS: You ask for a compensation subsidy?

MR. CRONKITE: Yes.

COMMISSIONER ANGUS: When you ask for that, do you ask for that in the name of the three provinces?

MR. CRONKITE: Yes.

COMMISSIONER ANGUS: Are the other three provinces associated with you in making that request?

MR. CRONKITE: I did not hear it yesterday in Manitoba's submission, but I think I did hear an adherence to two types of subsidy; but I believe Mr. Shepard did not mention a compensation subsidity. So far as I know, they are not associated with us formally. They will have to speak for themselves.

THE CHAIRMAN: What are the figures?

MR. CRONKITE: About \$40 million.

THE CHAIRMAN: For the three provinces?

MR. CRONKITE: Yes.

THE CHAIRMAN: Annually.

MR. CRONKITE: It is at middle of page 10268.

THE CHAIRMAN: All right. Will you continue?

MR. CRONKITE: Yes, Mr. Chairman.

The relative burden of transportation costs to Saskatchewan can be summarized in a few words. National policy has led to unduly high transportation charges. Loss of monopoly in certain traffic in certain areas has led to unduly high charges on traffic in areas such as Saskatchewan

where relative monopoly has been maintained and particularly on traffic least susceptible to competition, namely long-haul traffic. Obviously a rate structure which can do anything of any account to correct this situation is out of the question. As pressure for further revenues continues, increases will be applied wherever the monopoly continues, although the monopoly position even now is only certain on the long-haul traffic.

Under the heads of equalization and competitive rates it has been urged that a rate structure as equitable as possible to the prairies should be established. Such a rate structure, however, even if achieved, will not be satisfactory, since it may be regarded as almost inevitable that with increased competition by other types of carriers, the railways will seek to raise the rates on the long haul and in all instances where there is no competition.

It was with this thought in mind that the Province of Saskatchewan made the following proposal in the general submission (Volume 52, p 10081). It is the heart of the proposal and I shall read it to you.

(Page 21746 follows)

"First, as to what may be called deficit subsidies, that is payments from the public treasury to the end that the railway may continue to provide satisfactory services despite inadequate operating revenue. In this connection two statements should be made: (1) there is definitely no thought of freezing rates after equalization has been achieved thus putting the railways in the happy position of knowing that the budget will be balanced from the public treasury in any event; (2) no subsidy of this type will be necessarily involved if the railways have progressive management and a proper supervision is exercised by the Board. The position of the Province is this: granting that substantial equalization is achieved then if as a result of rate reductions in other areas there is a deficiency of railway earnings, the situation should not be corrected by higher rates in Western Canada, and other vulnerable areas. Under such circumstances a subsidy should be resorted to. Subject to this, normal rate fixing should proceed, under the supervision and guidance of the Board. Indeed both rate changes and such a deficit subsidy will be under the supervision of the Board, strengthened it is expected, as suggested in an earlier portion of this submission." And that was spoken to this morning by my friend Mr. MacPherson.

This recommendation is here repeated and a suggested amendment has been filed with the design of making it effective. This amendment is as follows -- and without any amendment of the Railway Act it would appear as 325.A.:

325.A. On any application by the railways for a general increase in freight rates the Board, if it finds that the railways require further revenue for

their efficient operation, may either:

- (a) order such general increase as it finds is necessary; or
- (b) recommend to the Government of Canada that any additional sum so required be paid by the Government to the railways or to any specified railway, in whole or in part.

Mr. Chairman: , in our opinion, this suggestion of a deficit subsidy is sound, and it may be that your Commission on an analysis of the existing situation may find that rates should be adjusted immediately and that payment of a deficit subsidy should be made at once in order to make this possible. This would in no sense be subsidizing the West. It would, in essence, be the devotion of public funds for the provision of services in areas where the carrier is operating at a loss.

That is, if I may explain what I mean, it may be that we cannot prove that substantial areas are being served at a loss to the carrier, and with a---

THE CHAIRMAN: That substantial areas what?

MR CRONKITE: Are being served by the carriers at a loss to the carrier, to the railway.

THE CHAIRMAN: You mean today?

MR CRONKITE: Today. If that is true, we are forced to the conclusion that the long haul rates are paying too much; they are paying a subsidy to these other railways. I suggest, therefore, that the principle which appears in the Saskatchewan brief could be extended so that this Commission could recommend the payment of a subsidy immediately, before waiting for the phenomenon contemplated in that passage which I quoted from the brief.

It will have been noted that our recommendation

was conditioned in this manner: that no carrier should receive a subsidy unless it was operating effectively and economically.

I should like, in closing, to make a few short general observations.

Under present trends, with increasing competition by other carriers, the payments not only of subsidies, seem inevitable, but very substantial subsidies. By the same token it may also be suggested that the nationalization of the Canadian Pacific is inevitable. The question arises whether anything may be done to prevent these occurrences. In answer, I would say that the compensation subsidy is a plain matter of elementary justice, and no change of conditions will alter that conclusion. I would hope, however, that payment of the deficit subsidy might be avoided. Perhaps the same might be said of nationalization.

THE CHAIRMAN: What? That it might be avoided?

MR CRONKITE: Yes.

A reading of the transcript of evidence indicates that the railways during hearings before this Commission have made one suggestion, viz., that rates should be raised. Another significant factor to be gleaned from the record is the persistent effort of these carriers to meet other carriers by cutting rates.

It has been pretty effectively demonstrated that both these devices have their limits and may easily defeat themselves. I suggest, however, with some hesitation -- with great hesitation -- that the railways may possibly have got into a rut. If so, it is time they got out. Instead of making sure that the dividend of 5% will be forthcoming without effort, why not make an effort to meet the situation?

I suggest, and again with great hesitation, that the situation may not be so hopeless. In the future as some

of my other remarks may have indicated. It seems that relief may be expected under three heads -- accompanied by a growth of the economy, supporting more people for each mile of railway, although I am not advocating bringing more people in, but I would hope our economy---

THE CHAIRMAN: Not advocating immigration?

MR CRONKITE: No, sir; I do not want that to be implied. I am not saying anything about it. I hope there will be more people in Canada and the economy will support them, and that will be good for the railways, I am sure. But I think that in addition to that relief may be expected under three heads: (1) by taking advantage of technological advances -- as to achieve a maximum of productivity from labour and materials; (2) By frank recognition of the existence of potent competitors and an accommodation of policy thereto. It is simply astounding that the railways should have continued to lose so much money on passenger traffic. Why not yield to the inevitable in some instances at least and let the better adapted competitor do the work.

THE CHAIRMAN: That would mean abandoning passenger services in some places.

MR CRONKITE: That might be.

THE CHAIRMAN: In Saskatchewan?

MR CRONKITE: I qualify that; I was afraid of that question, so I qualify it in advance.

The same might be said of competition in the freight field. And let me say emphatically that I am not suggesting, but I would oppose, the depriving of any area of reasonable service -- and I think that answers your question. If it is necessary, in order that a community have service, that the railway give that service at a loss, then I would have no doubt that the railway should be compensated from public funds, rather than the users of long-

haul freight services on the prairies. The choice is plain there. (3) By closer co-operation between the two railway systems, to the end that service be improved and expenses cut. I see three possibilities, along with an enlarged economy for the same area.

COMMISSIONER ANGUS: If the cost of railway operation were to increase, for instance, because of increased wages for labour, would you simply enlarge the subsidies?

MR CRONKITE: Well, I don't know. If that becomes a legitimate expense of transportation, no, unless it means that some users of freight are paying more and other areas are causing a loss to the carrier; if it involves that, my answer is yes. There is no reason in the world why the payer for freight services on the long haul should pay a subsidy to people in some other area, whether it is in Saskatchewan or Ontario or Nova Scotia, and that is just what it would be.

THE CHAIRMAN: By your subsidies would you have this result, possibly, that in effect the Parliament and the Government of Canada would be in a position of having all the railways on their hands with annual deficits, \$40 million, in these three provinces you have mentioned, and everything else?

MR CRONKITE: They might have; but somebody pays it somewhere, always.

THE CHAIRMAN: Why not have Government ownership outright, then?

MR CRONKITE: Well, sir, I don't know. Your Commission, sir, will have much more information before you than I have on this matter, and I---

THE CHAIRMAN: You would even go so far as to have the Board recommending subsidies?

MR CRONKITE: I surely hope they will, sir.

THE CHAIRMAN: Parliament might not agree.

MR CRONKITE: They might not. Well, I believe in democratic processes, representative institutions.

THE CHAIRMAN: The Board is there primarily to fix rates, just and reasonable rates, and let somebody else look after subsidies?

MR CRONKITE: Well, I think the Board does have a place, and there was a suggestion---

THE CHAIRMAN: Then you would have the Board do economic planning in these cases?

MR CRONKITE: No, sir. The economic planning goes no further, to my mind, certainly no further, than was outlined by Mr. MacPherson, subject to this, that in so far as that deficit subsidy was recommended---

THE CHAIRMAN: Well, the Board might say, "The freight rates ought to be this, but this region cannot support this, therefore we will make the rate so much less and ask the Government to pay it."

MR CRONKITE: And then there would be parliamentary action.

THE CHAIRMAN: Isn't that entering into economic considerations?

MR CRONKITE: Yes; and in so far as it is, I would want them to.

THE CHAIRMAN: I beg your pardon?

MR CRONKITE: And to that extent I would not be afraid of it.

THE CHAIRMAN: That is a great extent. They would have to equip themselves with all the necessary expert information and advice and so on.

MR CRONKITE: Yes.

THE CHAIRMAN: And then you might have the case of

the Board making such a recommendation, shirking the duty, the primary duty, of fixing adequate rates, and then Parliament questioning that and the Government questioning it; then what?

(Page 21753 follows)

MR. CRONKITE: Well, it would not be the first time, sir.

THE CHAIRMAN: You see, you can't say that Parliament must vote whatever the Board submits.

MR. CRONKITE: No, I believe in Parliamentary institutions, and if they won't, well, I just have to continue.

THE CHAIRMAN: Well, I am sorry. You had better go on.

MR. CRONKITE: Well, I am all through, sir.

MR. COVERT: There is one more paragraph.

MR. CRONKITE: My faith is that through greater effort by the railways, through stricter and better informed regulation by the Board and through the recommendations which this Commission will make an era of prosperity for the railways and improved service for the customers will result.

I would like in conclusion, my lord, to express the same sentiments with which Mr. MacPherson began, and on behalf of the Government of Saskatchewan I express satisfaction over the creation of the Commission and pleasure at the patience shown by the personnel.

---The Commission adjourned at 4:45 p.m., to meet again at 10:30 a.m. on Friday, May 5, 1950.

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